No. 33
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VOLUME VI

TRANSCRIPT OF RECORD

SUPREME COURT
OF THE
UNITED STATES

OCTOBER TERM, 1952

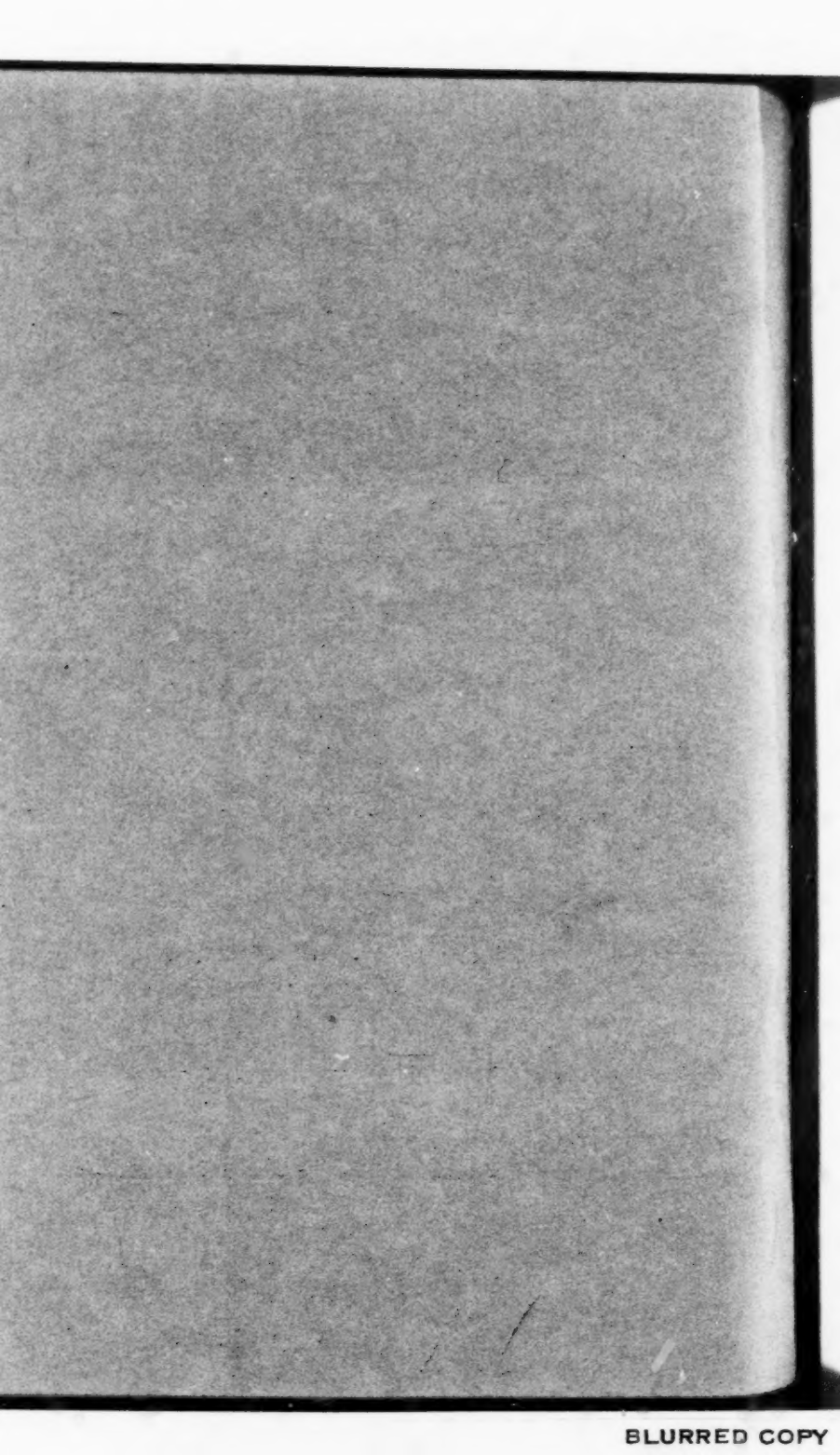
No.

ST. JOE PAPER COMPANY, ET AL.,
Petitioners,

versus

ATLANTIC COAST LINE RAILROAD COMPANY
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.



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Volume III—Pages 521 to 936, inclusive

TRANSCRIPT OF RECORD

UNITED STATES

COURT OF APPEALS

FIFTH CIRCUIT

No.

In the Matter of

FLORIDA EAST COAST RAILWAY COMPANY,
Debtor.

ATLANTIC COAST LINE RAILROAD COMPANY, ET AL.,
Appellants,

versus

ST. JOE PAPER COMPANY, ET AL.,
Appellees.

Appeals from the District Court of the United States for the Southern District of Florida

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(ORIGINAL RECORD RECEIVED MAY , 1949)

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Request of W. G. Welbon, et al., for Printing of Additional Portions of Record.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF FLORIDA,

JACKSONVILLE DIVISION.

No. 4827-J.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	In Proceedings for the Reorganization of a Railroad.

To the Clerk of the Above Styled Court:

On behalf of W. G. Welbon, Gail E. Chandler, John W. Snyder, O. A. Statler, E. N. Claughton and A. W. Corbett, request is made that the following additional portions of the record on appeal be printed:

1. Report, accompanying summary and order of the Interstate Commerce Commission filed and entered April 6, 1942, covered by the certificate dated August 22, 1942, described in item 1 in the "Designation of Contents of Record on Appeal by Atlantic Coast Line Railroad Company."

2. Report and order of said Commission filed and entered August 10, 1942, covered by said certificate.

3. Order and opinion filed October 19, 1943, sustaining objections to Plan of Reorganization and referring same

back to Interstate Commerce Commission, described as document No. 336 in item 25 in said designation.

4. Summary accompanying said Commission's report dated January 8, 1945, and the second supplemental order of said Commission entered January 8, 1945, covered by the certificate dated April 2, 1948, described in item 5 in said designation.

5. Third Supplemental Report proposed by Ralph H. Jewell, Examiner, and accompanying summary, covered by the certificate dated April 2, 1948, described in item 12 in said designation.

6. Summary accompanying said Commission's report dated April 8, 1947, and the Third Supplemental Order of said Commission entered April 8, 1947, covered by the certificate dated April 2, 1948, described in item 13 in said designation.

7. Report of trustees filed September 28, 1948, giving information requested by St. Joe Paper Company, described as document No. 700 in item 25 in said designation. (If the report is one of the exhibits enumerated in item 24 in said designation, which exhibits are to be photo-lithographed pursuant to paragraph No. 4 in the request of Atlantic Coast Line Railroad Company for printing or photo-lithographing of portions of the record, this request for the printing of the report is not intended to require duplication, and may be disregarded.)

8. Application of trustees, filed September 23, 1948, for authority to purchase ten Diesel-electric locomotives, described as document No. 701 in item 25 in said designation.

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9. Order filed October 6, 1948, authorizing trustees to purchase ten Diesel-electric locomotives, described as document No. 703 in item 25 in said designation.

10. The following portions of the transcript of the proceedings at the hearing before the Court on April 22, 1949: (a) The portion of the statement made by the Court appearing in the paragraph which begins on page 43 with the words "Now, the trustees," to and including the conclusion of the same paragraph on page 44; (b) beginning on page 66 with the statement relating to the production and swearing of A. A. Jackson as a witness, and continuing with his direct examination by Mr. Frink, to and including page 72.

11. Order filed April 26, 1949, authorizing the expenditure in 1949 of not to exceed $700,000 for general additions and betterments to debtor's property.

12. Order filed April 26, 1949, directing debtor's trustees to pay three installments of interest on debtor's First and Refunding 5% Mortgage Bonds.

WALTON, HUBBARD, SCHROEDER, LANTAFF & ATKINS,
Attorneys for W. G. Welbon, *et al.*

By MILLER WALTON,
Of Counsel.

Addresses:

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913 Alfred I. duPont Building,
Miami 32, Florida.

Report Accompanying Summary and Order of the Interstate Commerce Commission Filed and Entered April 6, 1942.

INTERSTATE COMMERCE COMMISSION
WASHINGTON.

FINANCE DOCKET No. 13170.

FLORIDA EAST COAST RAILWAY COMPANY
REORGANIZATION.

April 6, 1942.

SUMMARY OF REPORT.

Under the approved plan, capitalization will be reduced from $95,616,000 to $37,000,000; and the fixed interest charges will be reduced from $2,823,480 to $507,260, which will be increased to $537,260 by reason of an increased interest rate on fixed-interest bearing bonds provided income available for fixed charges shall equal or exceed $1,250,000 a year for any 2 consecutive years after consummation of the plan. The effective date of the plan is January 1, 1942. New capitalization and charges will be as follows:

Issue	Amount	Annual Requirements
Equipment notes	$ 1,992,000	$ 57,260—Int.
1st mort. series—A bonds	12,000,000	450,000—Int.[1] 200,000—Cap. Fund[2] 60,000—Sink. Fund[3]
General—mort. series—A bonds	4,500,000	202,500—Int. Cont. 22,500—Sink. Fund
Common stock (no par) 450,000 shares	18,508,000	
Total capitalization	$37,000,000	$992,260

[1] Annual interest on first mortgage bonds will be increased $30,000 annually if income available for fixed charges equals or exceeds $1,250,000 per annum for any 2 consecutive years after consummation of the plan.

[2] Annual mandatory (if earned) capital fund payments will equal 2 percent of total railway operating revenues for the first 10 years after the effective date of the plan and thereafter 1 percent will be mandatory (if earned) and 1 percent discretionary with the board of directors.

[3] Annual sinking fund payments on first mortgage bonds, series-A, will equal one-half of 1 percent of bonds outstanding but payments will not commence until 10 years after their date of issue.

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Summary of Commission's Report of April 6, 1942.

The equities of the holders of general unsecured claims not entitled to priority and of stock are found to have no value and no provision is made for their participation in the plan. The claims of holders of present first and refunding mortgage bonds, totaling $45,000,000 of principal and $24,375,000 of interest which will be accrued and unpaid as of January 1, 1942, cannot be satisfied in full within the capitalization recommended, *but these holders will receive all the new income bonds and new stock to be issued in the reorganization, constituting the entire equity remaining in the property after satisfaction of the claims of the present first-mortgage bondholders.*

Holders of present first-mortgage bonds will receive under the approved plan, for each $1,000, principal amount, of bonds held, $1,000, principal amount, of new first-mortgage 3¾ (4) percent bonds. Holders of present first and refunding mortgage bonds will receive for each $1,000, principal amount, of bonds held and all accrued and unpaid interest thereon to January 1, 1942, $100, principal amount, of new general mortgage-income 4½ percent bonds and 10 shares of new no-par common stock. Equipment trust certificates outstanding will be assumed by the reorganized company.

This report which approves a plan of reorganization for the Florida East Coast Railway Company, is in outline as follows:

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INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET No. 13170

FLORIDA EAST COAST RAILWAY COMPANY
REORGANIZATION

Submitted October 24, 1941 *Decided April 6, 1942*

Plan of reorganization for the Florida East Coast Railway Company, pursuant to section 77 of the Bankruptcy Act, as amended, approved.*

SCOTT M. LOFTIN and RUSSELL L. FRINK, for receivers and subsequently for trustees of the debtor.

EDGAR G. CROSSMAN, JUDSON C. MCLESTER, JR., CHARLES H. MURCHISON, and EDMUND H. KELLOGG for deposit committee for the debtor's first and refunding mortgage 5-percent bonds.

JOHN R. TURNEY and GILES J. PATTERSON, for the estate of Alfred I. duPont, intervener.

F. P. FLEMING, R. K. PAYNTER, JR., G. W. BOTTS, EUGENE J. CONROY, JOHN A. BUSSIAN, FRANK E. BRYANT, PERCIVAL E. JACKSON, ARTHUR Y. MILAM, ROBERT R. MILAM, MILTON LOEWE, HENRY P. ADAIR, JESSE E. WAID, JOHN G. JACKSON, WILLIAM L. CLAY, JR., THOMAS E. GRADY, JOHN A. O'ROURKE, FRED M. VOLZ, and E. C. CHOATE for other interveners.

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* Prior report 236 I. C. C. 737 (Finance Docket No. 12704).

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REPORT OF THE COMMISSION

Division 4, Commissioners Porter, Mahaffie, and Miller.

BY DIVISION 4:

Exceptions to the report proposed by the examiner were filed; and the case was argued orally before us on October 24, 1941. Our conclusions differ somewhat from those of the examiner.

I. GENERAL.

A. Nature of proceedings. Hearings. Interveners.

A deposit committee for Florida East Coast Railway Company first and refunding mortgage 5-percent bonds, series A, hereinafter called the 5-percent committee, for the purpose of effecting a reorganization of the Florida East Coast Railway Company, a Florida corporation, hereinafter called the debtor, under section 77 of the Bankruptcy Act, as amended, in proceedings entitled "In the Matter of Florida East Coast Railway Company, in Proceedings for the Reorganization of a Railroad No. 4827-J", then and now pending in the United States District Court in and for the Southern District of Florida, hereinafter called the court, on January 25, 1941, filed with this Commission for its approval a plan of reorganization, hereinafter referred to as the committee plan.[1] A modification of this plan was later

[1] The 5-percent committee represents owners of the debtor's first and refunding mortgage 5-percent bonds, series A, aggregating not less than 5 percent of all of the debtor's indebtedness and not less than 10 percent in amount of the total outstanding issue of the debtor's first and refunding mortgage bonds. The committee filed a petition on January 25, 1941 with the court and with the Commission, stating that the debtor was insolvent and unable to meet its obligations as they matured and proposing that a reorganization be effected. With the petition filed with the court and Commission and as a part thereof was the plan of reorganization proposed by the committee. The court entered an order on January 31, 1941, approving the petition as properly filed. For about 9 years prior to this date the debtor had been operated in receivership, in proceedings instituted in the same court, the cause being entitled (as of the time of the filing of the petition under section 77) *Bankers Trust Company et al., as Trustees*, vs. *Florida East Coast Railway Company*, Consolidated Cause No. 757-Eq. Subsequent to its approval of the section 77 petition, the court, on February 21, 1941, appointed Scott M. Loftin, who had been a receiver of the debtor for about 9 years, and Edward W. Lane, as trustees of the debtor's property subject to ratification of the appointments by the Commission. By order entered April 8, 1941, we ratified the appointment, and the court on April 18, 1941, authorized the trustees so to act.

proposed by the committee and further references to it herein will include the modification.

On March 4, 1941, Jesse Ball duPont, Reginald S. Huidekoper, Edward Ball, and the Florida National Bank of Jacksonville, as trustees of the estate of Alfred I. duPont, deceased, filed with the Commission a petition for leave to intervene in these proceedings and attached to their petition as a part thereof a plan of reorganization, hereinafter referred to as the duPont plan, which is materially different from that filed by the 5-percent committee. By order entered March 8, 1941, we permitted the intervention of the duPont estate trustees, and the filing of their plan. These interveners are owners of first-mortgage and first and refunding mortgage bonds of the debtor.

A hearing on these plans, pursuant to notice, was held by us and briefs were filed.[2]

Other interveners in the proceedings are the Equitable Life Assurance Society of the United States, the Mutual Benefit Life Insurance Company, the Mutual Life Insurance Company of New York, the Prudential Insurance Company and The Fidelity Mutual Life Insurance Company of America, holders severally of an aggregate principal amount of $5,397,000 of the debtor's first-mortgage 4½-percent bonds, who will be referred to hereinafter collectively as the institutional group; an independent protective committee for holders of the debtor's first-mortgage bonds, hereinafter referred to as the independent committee; Fred G. Hamilton *et al.*, individual holders of first and refunding mortgage bonds; S. A. Lynch, another holder of the same bonds; the trustees under both of the debtor's mortgages; the Greater Miami Traffic Association; and the New York Trust Company, as successor trustee under Florida East Coast Railway Company equipment trust, series D. The lease of equipment under this equipment trust was disaffirmed by

[2] At the hearing, evidence was offered by the receivers of the debtor but none by the debtor's trustees, who were not authorized by the court to act as trustees until April 18, 1941.

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the receivers of the Florida East Coast Railway Company by authority of the receivership court.

B. Classification of creditors and stockholders.

On June 6, 1941, the court, for the purposes of any plan of reorganization that may be presented in this proceeding, divided the creditors and stockholders of the debtor into six classes, stating, however, in its order that the enumeration of classes did not indicate any rank, preference, or priority of any class over any other class. The classifications are as follows: Class 1, unsecured claims against the debtor which would have been entitled to priority if a receiver in equity of the property of the debtor had been appointed by a Federal court on the day of the approval of the petition of the debtor to reorganize; Class 2, other claims which are not otherwise classified and which are entitled to priority over any mortgage of the debtor or over the bonds secured by any mortgage of the debtor; Class 3, first-mortgage 4½-percent gold bonds; Class 4, first and refunding mortgage 5-percent gold bonds; Class 5, claims of all other creditors; and Class 6, common stock of the debtor.

C. Description of debtor's property.

The debtor's railroad is located wholly in the State of Florida, comprising a double-track main line extending from Jacksonville to Miami, with branches from New Smyrna to Lake Harbor on Lake Okeechobee, from Titusville on the main line to Benson Junction, a belt line around Miami, partly double-tracked, and a branch, formerly part of the main line until abandonment of 125 miles of the Key West extension, extending from Miami to Homestead and Florida City.

At its northern terminus, Jacksonville, connection is made with the Atlantic Coast Line Railroad, hereinafter referred to as the Atlantic Coast Line, the Seaboard Air Line Railway, the Southern Railway, and the Georgia

Southern & Florida Railway. A freight station at Jacksonville is owned and operated jointly with the Atlantic Coast Line under a separate corporation in which each carrier has a one-half interest. The debtor also has, together with the Seaboard Air Line Railway, the Atlantic Coast Line, and the Southern Railway, a one-quarter interest in the Jacksonville Terminal Company, which provides passenger terminal facilities for all four railroad companies.

During 1925, a double-track line, known as the Moultrie or Bunnell cut-off, was constructed between St. Augustine and Bunnell, over which fast through trains operate which formerly ran on a longer route extending inland from St. Augustine to Palatka, where a connection is made with the Atlantic Coast Line, and thence eastward to Bunnell. South of Bunnell the main line passes through New Smyrna, the northern terminus of the Okeechobee branch, and Titusville, where a branch line extends westward to Benson Junction connecting there with the main line of the Atlantic Coast Line.

Further south the main line reaches in order, West Palm Beach, where a connection is had with the Seaboard Air Line Railway; Port Everglades, where it connects with the tracks of the Broward County Port Authority; and Miami, where connection is had with the Seaboard Air Line Railway and the Miami Municipal Railway.

The Okeechobee branch is a single-track line extending from New Smyrna to Okeechobee City, where it crosses the Seaboard Air Line Railway and thence south around Lake Okeechobee to Lake Harbor, where it connects with a branch of the Atlantic Coast Line.

The debtor owns 679.02 miles of road and 1,420.96 miles of track, comprising 426 miles of first main line track, 319.26 miles of main line second track, 321.28 miles of main line crossovers, passing tracks, yard tracks, and sidings, 253.02 miles of first branch line track, 7.67 miles of branch line second track, and 93.73 miles of branch line crossovers, passing tracks, yard tracks, and sidings. In addition, 5.11

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miles of road, together with 3.12 miles of crossovers, passing tracks, yard tracks, and sidings are operated under contract and 0.79 mile of road under a trackage right. The total of miles of road operated by the debtor is therefore 684.92 and the total miles of all track operated, 1,429.98.

The Moultrie cut-off consists of 29.27 miles of double-track road, comprising 58.54 miles of main line track and 7.11 miles of crossovers, passing tracks, yard tracks, and sidings, the total track mileage being 65.65.

The Okeechobee branch comprises 139.08 miles of road north and 55.69 miles of road south of Okeechobee, a total of 194.77 miles. In addition, 28.78 miles of other tracks are owned and operated, making the total trackage 223.55 miles.

The Miami Belt consists of 18.40 miles of road, of which the same mileage is main-line track, 7.67 miles second track, and 62.78 miles crossovers, passing tracks, yard tracks, and sidings. The total trackage is 88.85 miles.

The debtor owns $1,352,000, principal amount, of first-preferred-mortgage bonds, due 1962, and 7,497 shares, or 50 percent, of the common stock, of the Peninsular & Occidental Steamship Company, the other one-half interest being owned by the Atlantic Coast Line. The steamship company operates between Tampa and Miami, Fla., and Havana, Cuba. Very little freight but a large amount of passenger traffic is interchanged with the debtor.

The debtor's properties are in good physical condition, the only deferred maintenance being in connection with equipment and facilities such as passing tracks and yard tracks, which are not being currently used. There is also some painting of buildings which has been deferred.

D. Present capitalization and other liabilities.

The debtor's total capitalization as of December 31, 1940 was $94,680,000, comprising $37,500,000 of capital stock, $180,000 of 4½-percent series-H equipment-trust certificates, $12,000,000 of first-mortgage 4½-percent bonds, due

June 1, 1959, and $45,000,000 of first and refunding mortgage 5-percent gold bonds, series A, due September 1, 1974.

In addition, grants in aid of construction amounted to $114,004, and there were outstanding $1,116,000 of receivers' 3-percent series-I equipment-trust certificates.

Other liabilities of the debtor outstanding were as follows:

Open account owing Florida East Coast Car Ferry Company	$1,500,000
Open account owing trustees under the will of Mary Lily (Flagler) Bingham	400,000
Total	$1,900,000

Interest of $21,375,000 had matured and was unpaid on the debtor's first and refunding mortgage bonds as of the same date and $22,500,000 as of March 1, 1941. No interest is in arrears on the debtor's first-mortgage bonds and series-H equipment obligations or on the receiver's series-I equipment obligations.

There is outstanding a deficiency decree, as subsequently modified by stipulation, of $788,668.32, with interest upon $763,353.43 from May 9, 1936, at 6 percent per annum and upon $19,856.75 from December 22, 1936, at the same rate, arising from the disaffirmance by the receivers, by direction of the receivership court, of the lease of equipment under the debtor's equipment trust, series D. The total amount owing pursuant to the decree as of December 31, 1940 was $820,658. In addition, a suit is pending for an accounting by the receivers for use and maintenance of the equipment subject to the trust.

Tax accruals since 1930 amounted to $317,271 as of December 31, 1940.

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E. Proposed plans of reorganization.

1. Conditions leading up to the preparation of the plans. Lien disagreement.

In about the year 1936, a disagreement arose, or, for the first time found public expression, with respect to the extent of the property of the debtor covered respectively by a first lien under its first 4½-percent mortgage and its first and refunding 5-percent mortgage. The first mortgage, dated June 1, 1909, contains an after-acquired property clause and a pledge of all income of the debtor. Section 2 of Article Two of the first mortgage contains, however, the following provision:

> But nothing in this indenture expressed or implied is intended, or shall be construed, to limit the right or power of the Railway Company, hereby distinctly reserved, by the use of its credit or in any manner other than by the use of bonds hereby secured, or their proceeds, to construct or acquire other lines of railway, branches or extensions, or interests therein, or other property, free from the lien of this indenture.

The granting clauses of the first and refunding mortgage, dated September 1, 1924, expressly include the Okeechobee branch (then only constructed approximately as far as Okeechobee) as one of the lines of railroad covered by a first and only lien under that mortgage. Proceeds from the sale of bonds issued under the mortgage were used for certain improvements to the main line and for construction of an extension of the Okeechobee branch south from Okeechobee. The first-mortgage bondholders contend, however, that all the rail on the entire branch came from the main line.

The first-mortgage bondholders contend that they have a strong claim to a first lien on that part of the Okeechobee

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branch south of Okeechobee, by virtue of the after-acquired property clause of their mortgage and because of the use of rail from the main line in its construction. They also assert that their first lien covers the Moultrie cut-off and the Miami Belt Line as parts of the main line covered by their after-acquired property clause.

The first and refunding mortgage bondholders, on the other hand, claim a first lien on all of the Okeechobee branch, both the part referred to in the granting clause of their mortgage and the remainder, which they contend was paid for, in whole or in part, from proceeds from the sale of first and refunding bonds. For the latter reason some or all of these bondholders, who appeared by counsel at the hearings, also claim a first lien on the Moultrie cut-off, the Miami Belt Line, and various other properties. They also argue that through subrogation to the lien position formerly enjoyed by an aggregate of $5,441,000 of principal and interest of equipment-trust certificates paid by the receivers out of impounded cash, the trustees under their mortgage are entitled to a lien on certain equipment prior to the lien of the first mortgage.

This dispute, counsel for the parties state, can only be decided by the institution of legal proceedings which would be of long duration. Prior to the commencement of the section 77 proceeding for reorganization of the debtor, and while the railroad was still in receivership, the receivership court requested the 5-percent committee, representing first and refunding mortgage bondholders owning as of June 3, 1941, $20,535,600, or 45.6 percent, of the $45,000,000, principal amount of the issue outstanding, to submit a compromise plan of reorganization. With one or two minor modifications, the plan so submitted and which resulted from extended negotiations between the committee and the institutional group, which owns $5,397,000 or 44.97 percent, of the $12,000,000, principal amount outstanding of the debtor's first-mortgage bonds, is the same plan filed by the committee in the present proceeding. The duPont plan also represents a compromise of the lien question. At

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the hearing and oral argument before us and by brief, counsel for certain individual holders of first and refunding bonds objected to both plans on the ground that the matter should not be compromised, and that no plan should be approved until the relative rights and priorities under the two mortgages are determined and the debtor's earnings appropriately allocated.

Segregation and severance studies of the earnings of the Okeechobee branch and Moultrie cut-off and of the savings to the main line from operation of the cut-off were made by experts employed by the institutional group of first-mortgage bondholders and by the 5-percent committee (for holders of first and refunding bonds), and later modified as a result of conferences between the experts for each group. Witness Wyer for the institutional group estimated that, on a segregation basis, the debtor's earnings available for interest for the period 1936-39, inclusive, as reported to the Commission, would show an average annual deficit for the Okeechobee branch for the period, of $81,501 and average annual earnings for the balance of the system of $963,130. These averages would be a deficit of $66,275 and earnings of $1,089,308, respectively, if the debtor's income accounts for these years were adjusted for a favorable tax decision and reversal of Railroad Retirement Act taxes.

On a severance basis, his study for the same period shows average annual earnings available for interest of the branch line of $97,439 if it had been separately operated as a whole. Average annual earnings would have been $896,333 for the rest of the system. If the branch line had been operated in two unconnected parts, these average annual earnings of the branch and of the system would have been $168,260 and $764,645, respectively.

Witness Kennedy for the 5-percent committee estimated the segregated earnings of the Okeechobee branch for 1936 as $274,716; 1937, $169,656; and 1938, $307,493; the yearly average being about $250,000. He also made a severance study in which he estimated that in the year 1938, the sys-

tem would have had about $600,000 less net income if the branch line had not been in existence.

That part of the Okeechobee branch extending from the connection with the main line at Edgewater Junction, 2 miles south of New Smyrna, to Okeechobee, produces traffic of little importance, while the remainder of the branch is productive of valuable traffic, largely comprising perishable freight and sugar and molasses. It appears that consideration has been given by the receivers to the matter of seeking authorization of an abandonment of the northern section extending south to Okeechobee or that part extending as far south as Holopaw, and the construction of a 29-mile connection (Fort Pierce cut-off) extending northeast from a point south of Okeechobee to a point on the main line approximately at Fort Smith.

The *segregation* studies made of the earnings of the Branch and taking into consideration its contribution to the earnings of the main line, indicate that, in the years included in the studies, the earnings of the main line, irrespective of the contribution of the Okeechobee branch, would have amply covered the interest on the first-mortgage bonds.

The experts also made studies of the savings to the main line by operation of the Moultrie cut-off and agreed that approximately $75,000 a year was thereby saved.

The desirability, in some situations, of a compromise of a disagreement as to the extent of mortgage liens, has been expressly stated by the Supreme Court in *Case et al.* vs. *Los Angeles Lumber Products Co., Ltd.*,[3] 308 U. S. 106,

[3] The court stated in the course of its opinion: Of course, this is not to intimate that compromise of claims is not allowable under section 77B. There frequently will be situations involving conflicting claims to specific assets which may, in the discretion of the court, be more wisely settled by a compromise rather than by litigation. Thus, ambiguities in the wording of two indentures may make plausible the claim of one class of creditors to an exclusive or prior right to certain assets as against the other class in spite of the fact that the latter's claim flows from a first mortgage. Close questions of interpretations of after-acquired property clauses in mortgages, preference in stock certificates, divisional mortgages and the like will give rise to honest doubts as to which security holders have first claim to certain assets. Settlement of such conflicting claims to the *res* in the possession of the court is a normal part of the process of reorganization. In sanctioning such settlements the court is not bowing to nuisance claims; it is administering the proceedings in an economical and practical manner. 308 U. S. 130.

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60 Sup. Ct. 1, 84 L. Ed. 22. While that case involved a reorganization under section 77B of the Bankruptcy Act, the principle declared by the court is equally applicable to the present railroad reorganization proceeding under section 77. The claims of the contestants in the present proceeding are not mere nuisance claims, but are made in good faith, the bases of the respective contentions are fully disclosed, and involve a close question of fact and of construction of provisions of the respective trust indentures. The disagreement can be equitably and profitably compromised without recourse to protracted and expensive litigation, with its consequent detriment to all interests involved in the proceeding.

We find, therefore, that a reorganization of the debtor need not await a determination of the lien question, which is a matter for final decision by the court and not by us, in order that fair and equitable treatment may be accorded the disputants.

2. Capitalization. New securities.

(a) *Committee plan.*

Under the committee plan, the effective date of which would be January 1, 1940, the debtor's equipment-trust certificates (except those issued under equipment trust, series D, the lease of the equipment thereunder having been disaffirmed) and those issued by the receivers, aggregating in all $1,296,000 as of December 31, 1940, would be assumed by the reorganized company.[4] In exchange for the other outstanding securities of the debtor, there would be newly created and presently issued $12,000,000 of series-A first-mortgage bonds; $9,000,000 of income, series-A, general-mortgage bonds; and 450,000 shares of common stock without par value. Capitalization proposed under this plan immediately after its consummation would be $53,796,000,

[4] As of December 31, 1941, outstanding equipment-trust certificates amounted to $1,992,000.

including common stock at $80 a share, and the $1,296,000 of equipment-trust certificates.

The new first mortgage would be a direct first lien, subject only to liens upon equipment, on all the properties and assets of every kind owned by the reorganized company upon consummation of the plan, except such property or assets not necessary for the operation of the road as the reorganization managers, with the approval of the court, might unanimously determine should not be subject to such lien. The first lien would extend also to after-acquired property, subject to certain exceptions, which will be discussed later in the report. The series-A bonds would mature 40 years after date, be redeemable in whole or in part at any time on 30 days' notice at various specified premiums, and bear fixed interest at the rate of 3¾ percent per annum payable semi-annually, which would be increased to 4 percent per annum if income available for fixed charges should amount to not less than $1,250,000 for each of any two consecutive years after consummation of the plan. Until consummation of the plan, payments of interest at the present rate of 4½ percent per annum on the debtor's now outstanding first-mortgage bonds would continue.

The new first mortgage would provide for the issue of additional bonds for various purposes and subject to various restrictions, but the total of bonds outstanding at any one time under the mortgage would be limited to $18,000,000, except as the limit might be raised with the consent of holders of not less than 66⅔ percent in aggregate principal amount of first-mortgage bonds at any such time outstanding. Within this limit the mortgage would authorize the authentication and delivery of $500,000 additional bonds, hereinafter called free bonds, at any time or from time to time on the order of the reorganized company, to be used for any proper corporate purpose, and of so-called emergency bonds free from the restrictions contained in the plan other than that they must be authorized by a resolution of two-thirds of the board of directors to the effect that funds

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are needed and cannot be obtained except by the sale, exchange, or pledge of the bonds applied for. Annual sinking-fund payments of 5 percent of the amount of such emergency bonds, payable out of available net income remaining after fixed charges and capital-fund payments, are provided for in case such bonds are not retired within two years, and the amount of such bonds outstanding at any time shall not exceed $1,000,000, principal amount or 2 years' fixed interest, whichever amount shall be the greater. The plan contains other provisions with respect to retirement and cancellation of such bonds.

The new general mortgage would be a lien, subject to the lien of the first mortgage, so far as it attaches, upon all property of the company and a first lien on other property to the extent permitted by the terms of the first mortgage. The $9,000,000 of income series-A bonds to be issued upon reorganization would be dated January 1, 1940, mature January 1, 2015, bear contingent interest cumulative up to 13½ percent (interest for the last year before maturity being payable in any event whether or not earned), at the rate of 4½ percent per annum, which up to the limits of accumulation, would become absolutely due as a debt on December 31 in each year but would be payable on May 1, of the next succeeding year only out of available net income remaining after payment of fixed interest, capital-fund payment (as hereinafter described), and any sinking-fund payments for retirement of first-mortgage bonds which might be deductible before such contingent interest.

The mortgage would provide that the board of directors at any time in its discretion might pay out of any funds lawfully available therefor, any interest due or accrued on income bonds even if not earned. Annual sinking-fund payments for retirement of income bonds would be payable in an amount in each year, beginning May 1, 1941, equal to one-quarter of 1 percent of the largest principal amount of income bonds at any time authenticated and delivered under the general mortgage, if there be sufficient net income

available therefor after payment of the interest on the income bonds.

The income bonds would be redeemable in whole or in part at the option of the company on 30 days' notice or for the sinking fund on May 1 in any year on similar notice, at their principal amount plus full interest for the last preceding year and all unpaid accumulated interest for prior years and interest at the rate of 4½ percent per annum from the last preceding December 31 to the redemption date. General-mortgage bonds issuable under the mortgage would be unlimited in amount and would be issuable from time to time to refund outstanding first-mortgage bonds or general-mortgage bonds, or, in lieu of first mortgage bonds, for the same purposes and subject to the same restrictions at additional first-mortgage bonds might be issued to the extent that first-mortgage bonds are not issued for such purposes.

Additional general-mortgage bonds might be of various series, payable on such date or dates, bearing interest, either fixed or contingent, at such rates, and subject to such other specified conditions, and having such other characteristics as the board of directors should prescribe, but all general-mortgage bonds would be equally secured by the lien of the mortgage. The terms of the general-mortgage could be changed (with two exceptions relating to extension of maturity of the bonds and the necessary percentage of bondholders required to make any changes) by holders of 66⅔ percent in amount of outstanding general-mortgage bonds.

There would be authorized and issued upon reorganization 450,000 shares of capital stock without par value, each share being entitled to one vote, with a provision by charter or certificate of incorporation of the company for cumulative voting for directors. An additional maximum amount of 45,000 shares would be authorized for sale to officers and other executives of the reorganized company, who, however, would have no preemptive right to subscribe to any additional issues of stock of any class or of securities convertible into stock of any class or of warrants or options for the purchase of securities or stock of any class.

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(b) *duPont plan.*

The duPont plan provides that the debtor's and receivers' equipment-trust certificates (except the disaffirmed series-D), aggregating $1,296,000 as of December 31, 1941, would be assumed by the reorganized company. There would be a new first mortgage under which would be issued $12,000,000 of first-mortgage bonds, a new general mortgage under which would be issued $9,000,000 of income bonds, and 760,000 shares of capital stock of no-par value but of an initial stated value of $10 a share. The proposed capitalization under this plan would amount to $29,896,000, including the no-par stock at $10 a share, and assuming the above amount of equipment-trust certificates to be outstanding.

The new first mortgage would be a direct first lien, subject only to liens upon equipment, on all property of every kind without any exception owned by the reorganized company at the time of consummation of the plan or thereafter acquired. The authorized issue of bonds under the mortgage would be limited to $12,000,000, the amount which would be issued upon reorganization, and no additional bonds could be issued as long as any of the original $12,000,000 were outstanding and unpaid. The bonds would mature in 30 years, would bear interest at the rate of 4 percent per annum, payable semiannually, would be redeemable before maturity at various premiums, and would have the benefit of a sinking fund, payments to begin 5 years from date of issue of the bonds at the rate of $250,000 semiannually. These payments would be made out of available net income, if any, remaining after payment of fixed interest, payments into the capital fund (hereinafter described), and interest on the new general-mortgage income bonds. The first mortgage would contain no provision for a change in the extent of the lien thereof or of the rate of interest prescribed for the bonds issued thereunder, or for any other modification of the terms of the mortgage.

The general mortgage would be a lien, subject to the lien of the first mortgage, on all the company's property. The authorized issue of bonds would be limited to $9,000,000, the amount which would be issued upon reorganization, and no additional bonds could be issued as long as any of these original bonds were outstanding and unpaid. The bonds would be dated January 1, 1940 (the effective date of the plan), would mature January 1, 1975, would bear contingent interest at the rate of 4½ percent per annum, and would be redeemable before maturity at the option of the reorganized company or for the sinking fund for retirement of general-mortgage bonds, hereinafter described, on May 1 of any year on 30 days' notice at their principal amount plus full interest for the last preceding year, all unpaid accumulated interest for prior years, and interest at the rate of 4½ percent per annum from the last preceding December 31 to the redemption date. Interest would be mandatorily payable only if earned and would become absolutely due as a debt on December 31 in each year, up to the limits of accumulation specified, but be payable on May 1 of the next succeeding year. Interest for the last year before maturity would be payable whether earned or not. Unpaid interest would accumulate up to a maximum amount of 13½ percent but no more. A sinking fund for retirement of the bonds would be provided, annual payments on May 1 of each year beginning May 1, 1941, to equal one-quarter of 1 percent of the entire principal amount of bonds outstanding, to be payable out of available net income remaining, if any, after payment of the annual sinking-fund payments on the first-mortgage bonds. The mortgage would contain no provision for its modification. Any bonds issued under the plan could be refunded, provided that, as long as any of the originally issued general mortgage bonds were outstanding, no mortgage lien in excess of $12,000,000 prior to that of the general mortgage could be created.

Capital stock would be authorized in the amount of 1,000,000 shares, of which 760,000 would be issued upon

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reorganization. All the shares would be of no-par value, but those to be issued upon reorganization would have a stated value of $10 a share.

3. Capital funds.

Under the committee plan the new general mortgage would provide for the creation of a capital fund to which would be credited, to the extent to which net earnings after fixed charges would be available therefor, 1 percent of total railway operating revenues each year and, in the discretion of the board of directors, an additional 1 percent. The annual appropriation to the capital fund would be reduced by the amount of any depreciation charges for roadway and structures to the extent that such charges exceed the amount which would have been charged to operating expenses in connection with the property for which depreciation is charged and, in the discretion of the board of directors, be increased in any year by the amount by which available net income in the last preceding year may have been less than the maximum amount payable into the capital fund for the year, but no such deficiency could be made up for more than one preceding year.

The capital fund would be available for capital investments after deducting therefrom all retirements of roadway and structures charged to operating expenses in such calendar year and, to the extent not so used, could be applied to the retirement of new first-mortgage bonds or to pay any debt at maturity or to pay fixed charges to the extent not earned, but any annual amounts not expended or appropriated could be accumulated only up to $300,000.

Under the duPont plan, payments into the capital fund, which would be provided for in the new general mortgage, would be wholly discretionary with the board of directors, the maximum amount of the annual payments not to exceed 2 per cent of railway operating revenues for the year in which the appropriation would be made.

4. Allocation of new securities.

(a) *Committee plan.*—Under the committee plan, holders of now outstanding first-mortgage bonds would receive an equal principal amount of new first-mortgage series-A bonds. Holders of now outstanding first and refunding mortgage, series A, would receive for each $1,000 bond and accrued and unpaid interest to December 31, 1939, $200 of new general-mortgage income series-A bonds and 10 shares of new capital stock. No provision is made in the plan for any satisfaction of present unsecured claims against the debtor or for outstanding stock. The claim, if any, which may be established by the trustee for the series-D equipment-trust certificates (the equipment lease having been disaffirmed) against the receivers of the debtor for rental and maintenance of the equipment would be paid in cash or assumed by the reorganized company upon such terms as its board of directors might determine subject to the court's approval.

In the event the effective date of the plan is changed from January 1, 1940, to January 1, 1942, the 5-percent committee suggests that the increase of $4,500,000 in the claim of the first and refunding mortgage bondholders for 2 additional years' accrued interest be recognized to the extent of providing that any cash on hand at the date of consumation of the plan in excess of the then minimum required cash balance be allocated to such bondholders.

(b) *duPont plan.*—Under the duPont plan, holders of now outstanding first-mortgage bonds would receive an equal principal amount of new first-mortgage bonds. Holders of outstanding first and refunding mortgage bonds, series A, would receive for each $1,000 bond and accrued and unpaid interest thereon as of December 31, 1939, $200 of new general-mortgage income bonds, and 4 shares of new capital stock. They would also have the right, to be exercised only within a period of 60 days from the date the plan would be consummated, to purchase 4 additional shares of

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new capital stock at $10 a share. If this stock-purchase right should be completely exercised by all the holders of first and refunding mortgage bonds, 180,000 shares of new capital stock would be thus sold, which, together with the shares which otherwise would be distributed to these bondholders, would comprise 360,000 shares of the 760,000 shares of new capital stock to be issued upon reorganization. The remaining 400,000 shares would be sold to the proponents of the plan, the trustees of the estate of Alfred I. du Pont, at $10 a share, for the purpose of providing new capital, would be paid into the treasury of the reorganized company without deduction, and, to the extent not necessary to be expended for capital purposes, could be used for retirement by purchase or redemption of the new first-mortgage and general-mortgage bonds. Any shares of the stock purchasable but not purchased by holders of the first and refunding bonds would be offered for sale at the same price, $10 a share net, to the officers and employees of the reorganized company and to citizens of the communities served by the railroad.

No provision is made in the plan for any satisfaction of present unsecured claims against the debtor or of outstanding stock. Any claim resulting from the suit for an accounting by the trustees of the disaffirmed equipment-trust, series D, referred to above, would be paid in cash or assumed by the reorganized company upon such terms as its board of directors might determine, subject to the court's approval.

At the hearing, the proponents of this plan announced that they would accept as a modification a provision for the opening up of the new mortgages to such an extent as we might determine, in order to provide for future financing of capital requirements and would also accept a provision for the issuance of warrants for the purchase at $10 a share of the 180,000 shares of new common stock which, under the plan, would be offered to the first and refunding bondholders, the warrants to be exercisable for a suggested period of one year after consummation of the plan.

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In the event the effective date of the plan is made January 1, 1942, instead of January 1, 1940, the trustees of the duPont estate suggest that the 180,000 shares of new common stock reserved for subscription by holders of first and refunding bonds at a price of $10 a share be decreased by the estimated amount of 60,000 shares, such 60,000 shares to be added to the 180,000 shares to be allotted outright to the first and refunding bondholders. This additional allotment as estimated by the duPont estate trustees would represent, at a stated value of $10 a share, such part of the two years additional interest on the bonds, as they expect will be earned by the debtor in 1940 and 1941. This change will result in decreasing to 120,000 shares the amount of new common stock to which these bondholders may subscribe at $10 a share.

5. Provisions for execution of plans.

(a) *Committee plan.*

It is proposed under the committee plan that the reorganization would be carried out either by revesting possession of the debtor's properties in the debtor or by transferring them to a new corporation organized for the purpose, and the execution by the reorganized company of the new mortgages and the issue by it of the new securities contemplated by the plan. The plan would be carried out under the supervision of the three reorganization managers, one designated by the institutional group, one by the 5-percent committee, and one by the court. The board of directors of the reorganized company would consist of not less than 11 nor more than 17 members, and would consist initially of such persons as would be designated by the reorganization managers with the approval of the court.

The reorganized company would be deemed to have assumed all executory contracts of the debtor which shall have been affirmed and all executory contracts made by the receivers or trustees with the approval of the court not

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terminable at the conclusion of the reorganization proceedings, subject to the right of the reorganization managers to refuse, with the approval of the court, to have the reorganized company assume any such contracts. All labor claims against the receivers or the trustees and all labor claims against the debtor arising prior to the receivership or bankruptcy proceedings, and which shall be held to be entitled to priority over one or more of the mortgages of the debtor, would be deemed to have been assumed by the reorganized company, subject to all defenses which would have been available to the receivers, the trustees, or the debtor, respectively.

All current liabilities of the debtor incurred in the ordinary course of business prior to receivership which are entitled to priority over one or more of the debtor's mortgages, and current liabilities and obligations of the receivers and trustees incurred during the receivership and bankruptcy proceedings to the extent not paid by the debtor, the receivers, or the trustees, pursuant to order of the court, would be paid in cash or assumed by the new company. Such claims could be adjusted or compromised and dealt with or paid or discharged by the reorganized company as its board of directors might determine, subject to the court's approval.

All expenses in connection with the plan, costs of administration and other allowances made by the court, including the expenses of the 5-percent committee, would be paid by the reorganized company and would constitute a charge upon the properties of the reorganized company as a cost of administration prior in lien to all new securities. Any expenses of the 5-percent committee not allowed by the court would remain a charge upon the deposited 5-percent bonds in accordance with the terms of the deposit agreement.

(b) *duPont plan.*—Under the duPont plan there would be a reorganization committee consisting of five members, two nominated by the trustees of the duPont estate, and one each by the 5-percent committee, the institutional group,

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and the independent committee. The board of directors of the reorganized company would consist of not less than 11 nor more than 17 members. The members of the directorate, including those constituting the first board of directors, would be elected by the stockholders. Members would serve for one year each.

The other provisions for execution of the plan, while varying in some minor particulars from those of the committee plan as described above, are, in general, substantially the same.

The duPont plan includes a provision, not in the committee plan, that the reorganized company

> shall retain the privilege and authority of selling to the City of Miami, Florida, a sufficient amount of the railroad right-of-way and other property owned by the railroad, extending from N.E. 32nd Street South to S.E. 25th Road, Miami, Florida, for the purposes of the proposed Miami Loop Boulevard and upon the completion of such sale and the release of said property or any part thereof from the lien of any mortgages against the same, the proceeds received from such sales, shall be paid into a special sinking fund account for the immediate purchase, retirement and cancellation of outstanding first mortgage bonds.

6. Objections to the plans.

The 5-percent committee objects to the duPont plan as constituting a violation of the Fifth Amendment to the Constitution in providing for the taking over by the duPont estate of some of the property of the debtor, viz, the equity represented by majority control of the new common stock, without first satisfying the creditors and more particularly the first and refunding bondholders, whose claim the 5-percent committee contends would not first have been satisfied in full. The objection is also made that the duPont plan is unfair from a business standpoint in that its proposal to

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provide $4,000,000 in new capital immediately upon reorganization is unnecessary and illegal by the method proposed, that the $500,000 per annum sinking fund for retirement of first-mortgage bonds would unduly depress the value of the new stock and would be inequitable as permitting the trustees of the duPont estate to purchase the debtor's property with funds rightfully belonging to the first and refunding bondholders. The 5-percent committee contends that the increased rail program proposed by the duPont plan for the first three years after consummation of the plan might prevent the payment of interest on the new general-mortgage bonds, and almost certainly would eliminate any earnings on the stock during that period, and that the proposed sinking fund would seemingly eliminate any likelihood of dividends on the stock after the first 5 years when the sinking fund will commence to operate.

The trustees under the first and refunding mortgage approve the committee plan and object to the duPont plan upon substantially the same grounds as the 5-percent committee.

The trustees of the duPont estate object to the committee plan as making insufficient or impracticable provision for raising funds either immediately or in the future for necessary rehabilitation, working capital, or any capital purposes, and they contend that, if such funds should be obtained through issuance of additional fixed-interest-bearing bonds, an excessive amount of such indebtedness would result. The objection is also raised that the committee plan would result in irresponsible, speculator ownership of the new stock and that the company would be operated by a self-perpetuating directorate and management to the detriment of the railroad property and of the public.

The institutional group, intervener, approves the committee plan.

Fred G. Hamilton, intervening holder and representative of first and refunding mortgage bonds, objects to the approval of either plan and takes the position that, before

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approving any plan, we should determine the relative rights and priorities existing under the first mortgage and first and refunding mortgage and, after such determination, should then determine a method or formula for allocating earnings to which the respective mortgages are entitled.

The independent committee (for holders of first-mortgage bonds) approves the duPont plan and objects to the committee plan on the grounds (1) that it is not practicable because it makes no actual or adequate provision for the present or prospective cash needs of the reorganized company and (2) because it is unfair to the first-mortgage bondholders since it does not provide for complete satisfaction of their claim. The last argument is based upon the contention that the present first-mortgage bonds are fully secured, and that the new first-mortgage bonds will be of less value than the now outstanding ones, since they will bear a smaller than the now outstanding ones, since they will bear a smaller rate of interest and be issued in a total amount of $18,000,000 instead of the present $12,000,000. This latter objection is, in turn, predicated upon the assumption that the additional $6,000,000 of bonds, reserved under the committee plan for future issuance to pay for capital expenditures, will all be outstanding.

The trustees under the first mortgage take no position as to either plan, contending that the earnings of the debtor, even assuming that those of the Okeechobee branch and Moultrie Cut-off are subject to the first lien of the first and refunding mortgage, are entirely adequate to meet the interest requirements on the first-mortgage bonds. They contend that the present first-mortgage bonds should remain undisturbed in any reorganization.

The Greater Miami Traffic Association approves the duPont plan and objects to the committee plan on the ground that the latter does not provide local management and control of the reorganized company and makes no provision for a new passenger station at Miami.

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Various individuals testifying at the hearing expressed approval or disapproval of one or the other of the plans.

7. Conclusions as to certain features of the plans.

Under the provisions of section 77(d) of the Bankruptcy Act, as amended, we are required to render a report and order in which we approve a plan which may be different from any which has been proposed, that will in our opinion meet with the requirements of subsections (b)[5] and (e)[6] of the section, and will be compatible with the public

[5] Subsection (b) of section 77 provides in part that a plan of reorganization (1) shall include provisions modifying or altering the rights of creditors generally or any class of them, secured or unsecured, either through the issue of new securities of any character or otherwise; (4) shall provide for fixed charges (including fixed interest on funded debt, interest on unfunded debt, amortization of discount on funded debt, and rent for leased railroads) in such amount that, after due consideration of the probable prospective earnings of the property in light of its earnings experience and all other relevant facts, there shall be adequate coverage of such fixed charges by the probable earnings available for the payment thereof; and (5) shall provide adequate means for the execution of the plan.

[6] Subsection (e) of section 77 provides that the judge shall approve the plan certified to the court by the Commission if satisfied, after hearing, and without hearing if no objections are filed, (1) that it complies with the provisions of subsection (b), is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders; (2) that approximate amounts to be paid by the debtor, or by any corporation or corporations acquiring the debtor's assets, for expenses and fees incident to the reorganization, have been fully disclosed so far as they can be ascertained at the date of the hearing, are reasonable, are within such maximum limits as are fixed by the Commission, and are within such maximum limits to be subject to the approval of the judge; and (3) that the plan provides for the payment of all costs of administration and all other allowances made or to be made by the judge, except that allowances for the actual and reasonable expenses (including reasonable attorney's fees) incurred in connection with the proceedings and plan by parties in interest and by reorganization managers and committees or other representatives of creditors and stockholders, and the actual and reasonable expenses incurred in connection with the proceedings and plan and reasonable compensation for services in connection therewith by trustees under indentures, depositaries, and such assistants as the Commission with the approval of the judge may especially employ, may be paid in securities provided for in the plan if those entitled thereto will accept such payment.

Subsection (e) further provides that upon receipt of certification by the Commission of the results of submission to creditors and stockholders, the judge shall confirm the plan if satisfied that it has been accepted by or on behalf of creditors of each class to which submission is required under this subsection holding more than two-thirds in amount of the total of the allowed claims of such class which have been reported in the submission as voting on

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interest; or to render a report and order in which we shall refuse to approve any plan. Both plans appear to meet the requirements of subsection (b) (1) and (5) in that they would include provisions for modifying and altering the rights of creditors and would provide adequate means for the execution of the plan. Each plan also appears to meet the requirements of subsection (e) (3), and the proponents of each plan would no doubt be able to meet the requirements of subsection (e) (2). There remains to be determined whether either plan meets the requirements of subsection (b) (4) and subsection (e) (1) and is compatible with the public interest.

The duPont plan is based upon an offer by the trustees of the Alfred I. duPont estate to furnish $4,000,000 of new capital to the reorganized company by purchase of a controlling interest in its new stock at a price of $10 a share. The trustees of the duPont estate succeeded the executors of the estate after it had been administered in the Florida probate courts. They operate in much the same way as do directors of a corporation, the net income from the estate, after payment of a various annuities, being payable to the widow of the deceased during her lifetime, and thereafter for the maintenance of certain charitable enterprises.

The value of the duPont estate as estimated by its trustees is in excess of $50,000,000, the principal investments being in stocks of operating companies, many of which are controlled by the trustees. Their business activities are chiefly in Florida and include operation, through controlled corporations, of six National and six State banks, referred to as the Florida National Group of Banks, office buildings,

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the plan, and by or on behalf of stockholders of each class to which submission is required under this subsection holding more than two-thirds of the stock of such class which has been reported in the submission as voting on the plan; and that such acceptances have not been made or procured by any means forbidden by law: *Provided*, That, if the plan has not been so accepted by the creditors and stockholders, the judge may nevertheless confirm the plan if he is satisfied and finds, after hearing, that it makes adequate provision for fair and equitable treatment for the interests or claims of those rejecting it; that such rejection is not reasonably justified in the light of the respective rights, and interests of those rejecting it and all the relevant facts; and that the plan conforms to the above-stated requirements of this subsection.

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hotels, a warehouse, a paper company, and a railroad, the Apalachicola Northern Railroad Company. About 450,000 acres of land and several million dollars worth of business and industrial urban property are owned, located generally along the east coast of Florida, but no industry is owned or controlled which is located on the debtor's railroad.

The trustees of the duPont estate, being dissatisfied with the committee plan when it was made public, first made an effort to purchase the debtor's capital stock in order that they might file a plan of reorganization in the receivership court. Being unsuccessful, they then acquired the status of creditors by purchasing directly $10,000 of the debtor's first-mortgage bonds and $100,000 of its first and refunding mortgage bonds. Through a subsidiary, the Florida National Building Corporation, they acquired an additional $350,000 of first-mortgage and $3,400,000 of first and refunding mortgage bonds. Thereupon they filed a plan of reorganization.

The trustees of the duPont estate contend that the total consideration which they would pay for the debtor's property is $28,392,000, and that the present value of the property purchased is $23,400,000. The consideration of $28,392,000 is determined by adding together the principal amounts of (1) equipment obligations to be assumed by the reorganized company, $992,000; (2) new first-mortgage bonds to be outstanding, $12,000,000; (3) new general-mortgage bonds to be outstanding, $9,000,000; (4) 240,000 shares of new common stock to be allotted the present first and refunding mortgage bondholders at a stated value of $10 a share, $2,400,000; and (5) the cash payment by the trustees of the duPont estate of $4,000,000.

The present value of the debtor's property is estimated by the duPont estate trustees as follows: By first capitalizing at 5.33 percent and 5.75 percent the various estimates in the record of future annual earnings of the property, available for payment of interest, with a deduction of the cost of rehabilitation of the debtor's property from the re-

sulting capitalization of such of the several estimated future annual earnings as are based upon a premise that the property will first be so rehabilitated. The maximum earning value of the present property so arrived at is $22,200,000. To this maximum earning value the duPont estate trustees add the present value, estimated by them as $1,200,000, of alleged excess facilities of the debtor not having a present earning value. These excess facilities they state cost $6,533,000, the depreciated cost being $3,600,000.

It is their contention that, in view of the fact that total present facilities of the debtor are greatly in excess of present traffic needs, the total value of the debtor's physical property is no guide to the actual present value of the property.

The face amount of new general-mortgage bonds allotted under the duPont plan to the first and refunding bondholders equals one-fifth of the principal of their claim and between one-seventh and one-eighth of their total claim. If the effective date of the plan is January 1, 1942, the new no-par common stock additionally allotted would equal approximately 5.33 shares for each $1,000 bond and would have the right to subscribe for a total of 120,000 additional shares at a price of $10 a share, which is the same price at which the trustees of the duPont estate would purchase their 400,000 shares. An expert testifying on behalf of one of the parties supporting this plan stated that he was quite sure that the first and refunding bondholders would not avail themselves of this stock purchase right.

The duPont estate trustees contend that, after deducting from the value of the entire property of the debtor as estimated by them, the amount of equipment obligations to be assumed and the amount of new first-mortgage bonds to be exchanged for present first-mortgage bonds, the equity remaining to the first and refunding mortgage bondholders is not more than $11,400,000 and that this equity would be fully satisfied by an allotment of the new general-mortgage bonds and 240,000 shares of stock, together with the stock purchase rights, as proposed under their plan.

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They also allege, in further support for their contention that the present value of the claim of the first and refunding bondholders will be fully satisfied under the terms of their plan, that the prospective total market value of the new securities which will be allotted to the first and refunding mortgage bondholders will exceed the present total market value of the bonds now held and that the probable annual interest receivable on the $9,000,000 of new general-mortgage bonds will be in excess of the average annual interest receivable on the outstanding $45,000,000 of first and refunding mortgage bonds.

Under the duPont plan, the $4,000,000 of cash which would be provided by the duPont estate would not be paid to the first and refunding mortgage bondholders but into the treasury of the reorganized company. The duPont estate, in return, would obtain a majority interest in the capital stock of the reorganized company, and the payment of this cash into the treasury would benefit the first and refunding bondholders only insofar as a resulting increase in the physical value and earning power of the property upon expenditure of the new capital might strengthen the security back of the new bonds which they would receive in the reorganization and which otherwise might be diluted by the issuance of additional first-mortgage or general-mortgage bonds in payment for such improvements as might have to be financed in that manner. The new common stock which they would receive might also reflect some such additional value and also an additional value due to the ensuing smaller amount of indebtedness which would be outstanding. All these benefits, however, would be at the expense of loss of control of the reorganized company.

Measured by the total amount of the first and refunding mortgage bondholders' claim as of December 31, 1941, after deduction therefrom of the total face value of the new general-mortgage bonds allocable to these bondholders under the duPont plan, the price at which they would obtain the 240,000 shares of new common stock, which they

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would receive under that plan, would be about $248 a share compared with a cash price of $10 a share which the duPont estate trustees would pay for the 400,000 shares which they would purchase and by which they would control the reorganized company.

The trustees of the duPont estate contend that the future capital requirements of the debtor are such that it is essential that the $4,000,000 which they would pay be available to the reorganized company immediately upon consummation of reorganization or within a limited time thereafter. The proponents of the committee plan agree that certain additions and betterments should be made. They contend, however, that the record does not show that $4,000,000 of new cash is needed, and they further contend that any funds required for such purposes can be made available upon reasonable terms and within a capital structure based on a reasonable prospective indebtedness in some other manner not involving the surrender by the creditors to other parties of any part of the ownership of the property.

The receivers of the debtor have estimated the cash requirements for routine capital investments of the debtor for each year of the period 1941-45, inclusive, and for capital purposes other than normal additions and betterments, for the period 1941-51, inclusive. On the basis of the first estimate expenditures for the 5-year period 1941-45 required for routine additions and betterments, less the amount of cash expected to be available by reason of an excess of equipment-depreciation charges over the principal of equipment-trust obligations payable during the period, would amount to about $840,000. The amounts so required in each year of the period vary, the estimated amount needed in 1941 being $529,874, in 1942 $255,414, in 1943 $59,761, and in 1944 $59,571, while in 1945 there would be a credit balance of $65,400.

On the basis of the income account for the same period estimated by the receivers, the annual mandatory pay-

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ments (if earned) into the capital fund, of 1 percent of operating revenues, as provided for in the committee plan, would provide about $615,000 of this $840,000 needed for routine additions and betterments, and an additional $615,000 of optional capital-fund payments for the period would more than cover the entire cash requirements for such purposes and leave about $390,000 cash available for other capital expenditures.

The receivers' estimate that cash requirements for capital expenses, other than those classed as routine, during the 10-year period 1941-51, would total $4,275,000, exclusive of the cost of a new passenger station in Miami, with the accompanying rearrangement or relocation of tracks, or reconstruction and modernization of the present station. The cost of work in connection with the Miami station they estimate as between $300,000 and $1,600,000, depending upon the extent of reconstruction or rehabilitation. Also excluded from the above total of $4,275,000 is an estimated expenditure of $800,000 for construction of the projected Fort Pierce cut-off, hereinbefore described, which has been under consideration by the receivers of the debtor.

All but $315,000 of the estimated total of $4,275,000 is represented by two classes of items, a rail-renewal program to cost $2,160,000, and the purchase of new equipment, principally, if not entirely, Diesel locomotives, costing $1,800,000. The rail-renewal program contemplates an increase in the weight of rails in the main track from 90 pounds to 112 pounds, the program to extend over a period of 10 years, $216,000 being allocated in each year beginning in 1942. The requirement for new equipment would be payable $180,000 a year for 10 years beginning in 1941. For the first 5 years, the annual payments are duplicated in the statement of cash requirements for those years, for routine additions and betterments, and such amounts should be deducted for each of such years from one or the other of the two estimates in stating the total annual cash requirements needed for expenditures for all capital purposes.

If so corrected, the receivers' estimate of cash needed for all kinds of capital expenditures for each year 1941-45, and the total for the period is as follows:

1941	$529,874
1942	486,414
1943	365,761
1944	425,571
1945	165,600
Total	$1,973,220

As estimated by the receivers, this total of $1,973,220 would be met to the extent of about $615,000 by the total of annual mandatory (if earned) payments for the period into the capital fund as provided for in the committee plan, and by an additional total of $615,000 of such discretionary payments in the period if ordered by the board of directors of the new company. This would leave a minimum of about $743,000 and a maximum of about $1,358,000 of cash (if the mandatory capital fund payments only, are earned) needed for the first 5-year period as estimated by the receivers, which would have to be obtained from some source other than earnings and capital-fund payments. This amount is exclusive of possible additional cash expenditures in connection with the Miami station and for construction of the Fort Pierce cut-off.

For the additional 5-year period 1946-51, total capital expenditures, as estimated by the receivers, for other than routine additions and betterments, with the Miami station and Fort Pierce cut-off expenditures excluded, but including cash expenditures for new equipment and for the rail program, would be $411,000 each year in 1946, 1947, and 1948, $396,000 in 1949 and the same amount in 1950, and $216,000 in 1951, the total being $2,241,000.

Excess of annual depreciation charges over annual equipment-obligation payments and annual payments into a capital fund under the proposal of the 5-percent committee might provide more cash than needed for routine

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additions and betterments for this additional 5-year period, and to any such extent would provide some of the cash required for the other capital purposes as shown for that further period.

The trustees of the duPont estate estimated needed capital expenditures as determined by an expert employed by them, as requiring a total of $4,000,000 of cash expenditures at once for rehabilitation of the debtor's property. This estimate does not differ in any very considerable extent from that of the receivers as to the amounts of the items included. It contemplates, however, replacement of 79 miles of rail each year for three years to make good what is contended to be existing deferred maintenance, after which there would be a normal requirement of 25 miles a year of rail replacement.

The cost of relaying the 54 miles of rail in each of the first three years in excess of the regular 25-mile a year schedule is estimated to amount to $1,940,000 by the expert for the trustees of the duPont estate. Under this program the entire $1,940,000 would be charged to capital account although under the Commission's accounting rules only the excess cost of heavier rails over the cost to replace in kind the rails removed is chargeable to capital account. The witness expressed the opinion that, since the debtor was in process of reorganization the Commission might consider the entire $1,940,000 as a capital expenditure and authorize it to be so charged.

Under the program of the duPont estate 237 miles of rail would be relaid at the end of the first three years, 287 miles at the end of five years, and 412 miles at the end of ten years. Under the program of the receivers 237 miles of rail would be relaid at the end of three years and seven months, 330 miles at the end of five years, and 660 miles at the end of ten years. Assuming the life of rail to be 25 years, it would seem that both programs are an attempt to smooth out rail requirements to some extent, but in doing so both are somewhat wasteful in the earlier years by

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renewing rail before it has served 25 years. The receivers' program, however, would almost replace the rail within the period when all should be renewed on a 25-year life basis. Since under the program of the duPont trustees only 412 miles of rail would be replaced at the end of ten years, some of the old rail would be used 10 years after it had reached the end of its assumed service life in the main line tracks.

The other chief differences between the two estimates lie (1) in the positive inclusion by the trustees of the duPont estate of the expense of construction of the proposed Fort Pierce cut-off at an estimated cost of $700,000, as well as rehabilitation of the Miami station at a cost of $300,000, and (2) the assumption by the duPont estate trustees that the entire amount of capital needed for the capital improvements must be available immediately upon the reorganization, or within a short time thereafter.

While most, if not all, of the parties to the proceeding are agreed that construction of the proposed Fort Pierce cut-off would be of financial advantage to the railroad as resulting in important economies of operation, the committee points out that authorizations by regulatory bodies would be required for its construction and for the accompanying proposed abandonment of all or a large part of the Okeechobee branch, the securing of which would undoubtedly require considerable time. The committee also suggests that there is a possibility of effecting an arrangement with the Seaboard Air Line which would eliminate the necessity of constructing the cut-off. Plans for the construction of a new station in Miami or rebuilding of the present one also are indefinite at the present time.

The duPont estate trustees also contend that $500,000 of cash working capital should be immediately available to the reorganized company, additional to the amount of cash expected to be on hand at the time of consummation of a plan of reorganization. This contention is based on an estimate of a witness for the duPont estate trustees that

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$1,540,000 cash will be on hand on December 31, 1941, which with other assets would produce a total of $1,927,443 of quick asets. From this amount the witness deducted $1,797,596 which he characterized as total immediate liabilities, leaving net cash working capital of $129,847. Included in the items deducted are $200,000 for bankruptcy expenses, $300,000 for equipment-trust, series D, possible liability, and $200,000 for labor claims. The item of $300,000 for equipment-trust liability is the amount of the deficiency judgment entered after the foreclosure of the equipment. This, however, is being litigated and should not be characterized as an immediate liability since there is no way of knowing when it will be settled or paid. The item of $200,000 for labor claims is in the same category. On brief, counsel for the committee state that they have been informed by one of the reorganization trustees that since the hearings before us the Adjustment Board has acted on practically all of the pending labor claims and that a conservative estimate is that the payments under these decisions will not be in excess of $17,000. The chief accounting officer of the railroad also testified that a substantial amount of the other items classed as immediate liabilities would be paid not only out of cash on hand on December 31, but also out of January and February cash receipts, in which months the debtor gains a great deal of cash.

One of the receivers, now a trustee of the debtor, testified that the minimum of cash working capital which should be on hand in November of each year is $500,000 and that in order to have that amount then available it is necessary to accumulate approximately $2,000,000 by the end of April, since income greatly exceeds operating expenses from November through May while the reverse is true during the other five months. He also testified that as of April 17, 1941, the debtor had on hand $800,000 more than the necessary minimum for that season of the year, and that in his opinion there would be sufficient cash to pay all reorganization expenses, including allowances for fees and expenses,

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and even to pay income-bond interest to the extent earned from January 1, 1940, the effective date of reorganization as proposed by the committee. In the event the effective date of reorganization is advanced from that date, it was his view that the cash position of the reorganized company would be even more favorable. Cash on hand as of December 31, 1940, amounted to $1,301,858; on December 31, 1941, $2,143,876; and on March 31, 1941, $2,584,071.

While the new cash capital requirements of the reorganized company which should be available immediately upon reorganization, or within a year or two thereafter, cannot be exactly determined, we are of the opinion that only a relatively small part of the $4,000,000 of cash proposed by the duPont estate trustees to be paid by them into the reorganized company's treasury, will be immediately required. We are of the further opinion that although a moderate amount of new capital may be required in the future it may be justifiably raised, if necessary, through the sale or pledge of additional bonds, or in some other manner not involving the surrender by the creditors of the control of the reorganized company. The capital structure hereinafter approved by us will make suitable provision therefor.

II. NEW CAPITALIZATION AND CHARGES.

To meet the requirement of compatibility with the public interest, the plan approved should provide a capitalization represented by securities with some prospects for yielding a return to their holders, and having something more than mere speculative value. Under the provisions of subsection (b)(4) of section 77, there must be adequate coverage of fixed charges by the probable earnings available for the payment thereof.

A. Assets, capitalization, traffic, revenues, etc.

1. Book assets and valuation figures.

A consolidated general balance sheet of the debtor and receivers as of December 31, 1940, shows the following assets: Investment in road and equipment $82,160,571; improvements on leased railway property $19,985; deposits in lieu of mortgaged property sold $68,557; miscellaneous physical property of $320,473; investments in affiliated companies $1,809,632, including $781,823 of stocks, $602,001 of bonds, and $425,808 of advances; other investments, $52,338, including $32,036 of stock in the United States Sugar Corporation, $3,000 notes to an individual, and $17,302 of advances to two individuals; cash on hand $1,301,858; special deposits $15,100; loans and bills receivable $3,101; traffic and car-service balances receivable $139,898; agents and conductors $60,251; miscellaneous accounts receivable $343,027; material and supplies $1,791,727; interest and dividends receivable $403; other current assets $3,876; working-fund advances $4,943; other deferred assets $30,386; rents and insurance premiums paid in advance $8,971; discount on funded debt $2,158,058; and other unadjusted debits $115,593; total assets $90,408,748.

Liabilities shown on the consolidated balance sheet as of the same date were as follows: Common stock $37,500,000; grants in aid of construction $114,105; funded debt unmatured $57,180,000, including $180,000 of the debtor's series-H 4½-percent equipment trust certificates, $12,000,000 of first-mortgage 4⅞-percent bonds, and $45,000,000 of first and refunding mortgage 5-percent bonds; receivers' 3-percent series-I equipment-trust certificates $1,116,000; nonnegotiable debt to affiliated companies $1,900,000, comprising $1,500,000 owing the Florida East Coast Coast Ferry Company and $400,000 owing the trustees under the will of Mary Lily (Flagler) Bingham; traffic and car-service balances payable $226,177; audited

accounts and wages payable $723,221; miscellaneous accounts payable $69,379; interest matured unpaid $12,100; unmatured interest accrued $803,280, including $8,280 of equipment-trust interest, $45,000 interest on first-mortgage bonds, and $750,000 interest on first and refunding mortgage bonds; other current liabilities, $6,596; matured interest in default on first and refunding mortgage bonds, $21,375,000; other deferred liabilities $1,184,600, including a deficiency decree of $820,658 on equipment trust D; tax liability $317,271; accrued depreciation (all on equipment) $7,930,639; other unadjusted credits $186,268; additions to property through income and surplus $905,460; and miscellaneous fund reserves $452; leaving a profit and loss debit balance of $41,141,800.

As of December 31, 1938, the original cost of the property of the debtor, except land and rights, was for road, $59,423,856 and for equipment, $12,807,501, the cost of reproduction new for road property, $47,596,815 and for equipment, $13,197,077, the cost of reproduction less depreciation $35,748,309 for road and $6,369,465 for equipment, and the value of lands and rights $7,515,393, divided $5,537,880 carrier and $1,977,513 noncarrier. Net additions and betterments from December 31, 1938, to February 28, 1941, as reported by the trustees of the debtor, were $1,627,870.

The cost of reproduction less depreciation, plus the value of lands and rights, an allowance of $1,572,900 for working capital and net additions and betterments from December 31, 1938, to February 28, 1941, amounts to $52,833,937. The amounts shown in the valuation data were determined in accordance with methods frequently explained in the valuation reports of this Commission.

The record also contains statements of certain elements of physical value as of December 31, 1938, of the debtor's property separated into the several sections concerned in the lien dispute. For the main line, Jacksonville to Florida City, excluding the Moultrie cut-off and including the

Palatka, San Mateo, and Titusville branches, original cost, except land and rights, was $47,099,160; cost of reproduction new $38,742,811; cost of reproduction less depreciation, $28,841,311; and value of lands and rights, $7,087,760, divided $5,196,038 carrier and $1,891,722 non-carrier.

With respect to the Moultrie cut-off, original cost, except land and rights, was $3,207,324; cost of reproduction new $2,077,013; cost of reproduction less depreciation, $1,594,181; and value of land and rights, $20,695, divided $16,064 carrier and $4,631 noncarrier.

For the entire Okeechobee branch, original cost, except land and rights, was $4,922,033; cost of reproduction new, $4,127,374; cost of reproduction less depreciation, $3,177,794; and value of land and rights, $274,794, divided $254,450 carrier and $20,344 noncarrier. For the northern part of the Okeechobee branch extending from Edgewater Junction to Okeechobee, original cost, except land and rights, was $1,961,271; cost of reproduction new, $2,516,088; cost of reproduction less depreciation, $1,796,923; and value of land and rights, $63,527, divided $50,736 carrier and $12,791 noncarrier. For the southern part of the branch, extending from Okeechobee to Lake Harbor, original cost, except land and rights, was $2,960,762; cost of reproduction new, $1,611,286; cost of reproduction less depreciation, $1,380,871; and value of land and rights, $211,267, divided $203,714 carrier and $7,553 noncarrier.

For the Miami Belt Line, extending from Little River to South Miami, original cost, except land and rights, was $4,195,339; cost of reproduction new, $2,649,617; cost of reproduction less depreciation, $2,135,023; and value of lands and rights, $132,144, divided $71,328 carrier and $60,816 noncarrier.

2. Traffic. Revenues.

The territory served by the debtor is not extensively developed industrially and no large industries are served nor does the future hold promise of industrial growth.

The inbound traffic consists almost entirely of building material and consumption goods, the greater portion going to the Miami area. The outbound traffic comprises chiefly agricultural products, with vegetables and citrus fruits predominating. Some lumber from a mill at Holopaw on the Okeechobee branch is delivered to the main line at New Smyrna, and this source of traffic should continue for several years.

The debtor's tons of revenue freight and freight revenue for the period 1931-40, inclusive, and the average for the period are as follows:

REVENUE FREIGHT (tons)

1931	1,402,826	1934	1,267,923	1937	1,426,941
1932	938,544	1935	1,157,227	1938	1,422,692
1933	1,067,485	1936	1,390,219	1939	1,463,965
				1940	1,747,096
				Period average	1,328,492

FREIGHT REVENUE

1931	$5,684,882	1934	$4,899,365	1937	$5,742,407
1932	4,291,983	1935	4,813,030	1938	6,297,472
1933	4,500,930	1936	5,525,868	1939	6,034,677
				1940	6,666,482
				Period average	5,445,710

During the period, revenue per ton varied between a low of $3.82 in 1940 and a high of $4.57 in 1932.

The receivers of the debtor prepared an estimate of expected annual revenue freight, freight revenue, and revenue per ton for the 5-year period 1941-45. The average annual revenue freight so estimated is 1,924,246 tons, the average annual freight revenue $7,690,690, and the average revenue per ton of freight $4. This estimate, which is materially higher than the results for 1940, is based on an expected steady increase during the period in the amount of freight traffic and the revenue to be derived therefrom.

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The witness presented in support of this estimate stated that very little weight was given to traffic which might result from war conditions.

Passenger revenues, largely derived from tourist travel, contribute considerably to the debtor's total revenues. In 1940, passenger revenues were $3,093,802 and the annual average for the period 1931-40, inclusive, $2,192,246. The receivers' estimate for the 5-year period 1941-45 average annual revenues from this source of about $3,500,000, the estimate being based on an expected increasing volume of travel due to improved business conditions, better service as to schedules and type of equipment, and particularly on the growth of the permanent population in the territory served.

The trustees of the duPont estate also estimated operating revenues expected to be derived (1) in a minimum income year, (2) a normal income year, (3) a maximum income year, and (4) on the average, in the period 1941-45. These estimates are as follows:

	Minimum inc. yr.	Normal inc. yr.	Maximum inc. yr.	Average inc. 1941-45
Freight revenue ..	$5,340,000	$ 6,300,000	$ 8,400,000	$ 7,550,000
Passenger " ..	2,190,000	3,000,000	3,500,000	3,500,000
Other " ..	1,030,000	1,030,000	1,250,000	1,250,000
Total	8,560,000	10,330,000	13,150,000	12,300,000

Freight revenue expected to be realized in an average year of the period 1941-45 as estimated by the duPont estate trustees closely approximates that estimated by the receivers in their estimated average income account for the period. Other estimated revenues are the same.

3. Earnings and expenses.

Earnings available for fixed charges.

The abandonment in 1935 of the Key West extension had an immediately favorable effect upon the debtor's net railway operating income and income available for payment of interest. From 1931 to 1935, inclusive, net rail-

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way operating income as reported by the debtor showed deficits of $664,636, $281,776, and $225,476 in 1931, 1932, and 1934, respectively, and income of only $134,911 and $85,539 in 1933 and 1935, respectively. In 1936 such income was $1,015,720. It is, therefore, apparent that the earnings record for the years immediately prior to 1936 affords little, if any, basis for a determination of probable earnings in the future.

Railway operating revenues were $8,614,508 in 1936, $9,303,206 in 1937, $9,594,391 in 1938, $9,261,367 in 1939, and $10,748,838 in 1940. In the same years operating expenses were $6,515,854, $7,123,303, $7,002,599, $7,133,545, and $8,341,683, respectively, resulting in net revenue from railway operations of $2,098,654, $2,179,903, $2,591,792, $2,127,822, and $2,407,155, respectively. The amounts available for fixed charges for the same years, as shown on the debtor's books of account (after adjustment for tax reductions effected in June, 1939, as a result of a decrease in assessed value, and allocated to the applicable years), were $1,096,826, $941,530, $1,134,651, $810,898, and $994,130, respectively, or an average for the 5-year period of $995,607 a year.

If income available for payment of interest, as shown by the books of account of the debtor, after deduction of all other fixed charges including amortization of discount on outstanding obligations, were adjusted to include income items comprising taxes canceled on the abandoned Key West extension, over-accruals of property taxes, and adjustment of difference between additional Federal income tax assessments and tax refunds, all of which income items were entered in profit and loss account by permission of the Commission, the net incomes available for payment of interest for the 5 years, 1936-40, and the period annual average, would be as follows:

1936	$1,001,138	1939	$1,335,053
1937	723,982	1940	928,913
1938	828,818	Average	963,581

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If discount on present funded debt were not deducted before stating the amounts available for payment of interest, the amounts for the same years and the average for the period would be as follows:

1936	$1,072,446	1939	$1,401,793
1937	793,768	1940	994,130
1938	897,081	Average	1,031,844

The 5-percent committee contends that, in order properly to reflect the true earnings status of the property for the above years, further adjustments should be made in the above amounts consisting of (1) a credit of an additional $147,794 to the amount available for interest for the year 1936, representing depreciation of way and structures charged in that year on the Key West extension which has been abandoned, and (2) a credit of an additional amount of $82,979 to the earnings shown for 1938, being the amount of an adjustment of the difference between an additional Federal income tax assessment and tax refunds which pertained to an old prereceivership income tax matter settled in 1932 and 1933, the above amount being held in suspense until 1938 pending the determination of litigation as to who was entitled to the money. If these requested additional adjustments are made, the annual average earnings for the period available for interest would be increased to $1,077,999.

If income available for payment of interest, as stated on the debtor's books of account, after deduction of all other fixed charges, including amortization of discount on outstanding obligations, was further adjusted to give retroactive effect to tax legislation subsequently enacted, the net income available for payment of interest and the annual average for the same years would be as follows:

1936	$959,638	1939	$1,293,328
1937	666,865	1940	893,882
1938	790,754	Average	920,893

Without deduction of discount on funded debt in the statement of amounts available for payment of interest, the results for the same years and the average for the period would be

1936	$1,030,946	1939	$1,360,068
1937	736,651	1940	959,099
1938	859,017	Average	989,156

If the further adjustments for the years 1936 and 1938 referred to above are made, the annual average for the period would be increased to $1,035,311.

The debtor's receivers filed a forecast of average annual income for the 5-year period, 1941-1945. This shows expected railway operating revenues $12,300,000, railway operating expenses $9,425,000, and railway tax accruals $900,000, leaving a railway operating income of $1,975,000. From this sum are deducted equipment and joint facility rents of $765,000 and to the resulting figure is added $75,000 other income, giving an expected gross income of $1,285,000. Deductions, consisting of miscellaneous rents, miscellaneous tax accruals, and income charges, total $17,000, leaving $1,268,000 expected to be available for payment of interest.

The basis of the estimate of freight and passenger operating revenues has been already described, although for the purpose of the income account the amount of freight revenue is decreased slightly from $7,690,690 to $7,500,000; and operating expenses are estimated on the basis of average operating expense ratios for the last 5 years with consideration given to the physical condition of the road and equipment and estimated charges to operating expenses for a proposed addition and betterment program of expenditures over the next 5 years, which will be later referred to.

The estimated ratio of maintenance expenses, 34.9, is higher than the ratio, 32.3, for the last 5 years, due to the inclusion of an item of $440,000 a year for main line rail renewals in each of the next 5 years, while the transporta-

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tion ratio, 32.3, is less than the ratio, 33.6, experienced in the last 5 years because of expected ability to handle a greater volume of traffic without a corresponding increase in transportation expenses. The total expected average operating ratio of 75.2 compares with an average of 75.9 experienced in the 1936-40 period.

A witness for the trustees of the duPont estate also filed estimated income accounts of the reorganized company for (1) a minimum income year, (2) a normal income year, (3) a maximum income year, and (4) an average for the period 1941-45. These estimates, abridged, are as follows:

	Minimum income yr.	Normal income yr.	Maximum income yr.	Average income 1941-45
Operating revs.	$8,560,000	$10,300,000	$13,150,000	$12,300,000
" exps.	6,690,000	7,480,000	9,485,000	8,890,000
Operating ratio	78.2	72.6	72.1	72.1
Net ry. op. inc.	540,000	1,320,000	1,620,000	1,500,000
Other income	50,000	60,000	60,000	60,000
Income available for fixed charges and investment..	590,000	1,380,000	1,680,000	1,560,000

These estimates by the duPont estate trustees are based upon the premise that the $4,000,000 of cash to be furnished by the duPont estate under the duPont plan will first have been expended, and that all capital additions and improvements claimed to be immediately necessary under that plan will have been completed, including the intensive 3-year rail-replacement program which has been hereinbefore described. Otherwise, income available for fixed charges in the first 3 years of the period 1941-45 would be considerably less due to the necessity of charging to maintenance a large part of the cost of laying new rail, unless the Commission should authorize a departure in this case from its usual accounting rules. Maintenance-of-way charges for this average year of the 1941-45 period are $380,000 less than estimated by the debtor's receivers, which difference, perhaps, reflects this assumption on the part of the duPont estate trustees in making their estimate.

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A comparison of income available for fixed charges for the average year of the 1941-45 period as estimated by the receivers and the duPont estate trustees, shows that the latter expect about $292,000 more to be available, which may also be largely accounted for in the same way. The estimate of the receivers is $1,268,000 and that of the duPont estate trustees, $1,560,000.

Neither the receivers nor the duPont estate trustees contemplate any year of materially depressed earnings in their estimates of an average year for the 1941-45 period. The normal income year estimate by the duPont estate trustees is considerably less optimistic, being based on operating revenues less than those realized in 1940, although earnings available for fixed charges are greater.

In 1941 the debtor's income available for payment of interest, as reported to the Commission, was $1,601,963 before deduction of amortization of discount on funded debt and $1,537,746 after such deduction. Current earnings are undoubtedly influenced by the extraordinary economic conditions existing at present as the result of the war, one feature being the withdrawal from service of many ships formerly engaged in coastwise traffic. Whether that means of transportation will be reestablished on its former scale after the termination of the war is a matter of conjecture. This territory and the southern part of Florida generally have enjoyed a consistent growth in recent years and there is good promise that the normal growth will continue in the future and may to a large extent, at least, offset such loss in revenue as may eventually result from the reestablishment of coastwise water traffic on a more extensive scale than exists at the present time.

In past years the debtor's earnings available for fixed charges were greatly in excess of the earnings since 1931. For example, in the years 1921-1930, inclusive, average annual earnings of $3,020,736, were available for payment of fixed charges and in the years 1926 to 1930, inclusive, an average of $2,367,662 was so available. These however,

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were realized before declines in traffic and other adverse circumstances brought about the abandonment of the Key West extension. It is our opinion, and we find, that the $1,268,000 constitutes a conservative and reasonably correct estimate of the prospective income available for payment of interest for the average year of the 1941-1945 period.

B. Conclusions as to new capitalization and fixed charges.

A capitalization of the prospective earnings of $1,268,000 at 5 percent amounts to $25,360,000, at 4½ percent to $28,177,778, and at 4 percent to $31,700,000. A capitalization of the average earnings of $2,367,662 available for fixed charges for the years 1926 to 1930, inclusive, amounts to $47,353,240 if taken at 5 percent, $52,614,711 if at 4½ percent and $59,191,550 at 4 percent. Average yearly earnings available for interest, as adjusted, of $1,035,311 for the 5-year period 1936-40, inclusive, capitalized at 5 percent produces $20,706,220, at 4½ percent $23,006,911, and at 4 percent $25,882,775. In the most prosperous year of that period, similar earnings as adjusted were $1,360,008, which capitalized at 5 percent gives $27,201,360, at 4½ percent $30,222,400, and at 4 percent $34,001,700. A capitalization at 5 percent of the least favorable annual earnings of the period of $736,651 produces $14,733,020, at 4½ percent $16,370,022, and at 4 percent $18,416,275. If the earnings for 1941 of $1,601,963, before deduction of amortization, are capitalized at 5 percent the result is $32,039,260, at 4½ percent $35,599,178, and at 4 percent $40,049,075.

About 72.5 percent of the debt of the reorganized company other than equipment obligations, as recommended by the examiner, would immediately require interest at the rates of 3¾ or 4 percent per annum, and the remaining 27.5 percent of the debt would require interest at the rate of 4½ percent, this latter interest being payable only if earned. Equipment obligations should consistently carry a lower rate of interest. Stockholders, whose holdings under the

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examiner's plan would represent about one-half of total capitalization, would be justified in asking a higher yield than the debt obligations yield, and future income taxes may be expected to increase over those paid prior to 1941. These considerations indicate the propriety of using a rate of about 4½ percent in capitalizing the earnings of the debtor for consideration in our determination of the maximum allowable capitalization.

As of December 31, 1938, cost of reproduction less depreciation of the debtor's property plus present value of lands and working capital amounted to $51,206,067, and the addition of net additions and betterments as reported by the debtor from December 31, 1938 to February 28, 1941, brings the total to $52,833,937. The record shows that the existing facilities of the debtor are greatly in excess of its present needs and those reasonably foreseeable for the immediate future. A witness for the duPont estate trustees estimated the cost of such excess facilities as $6,533,000 and the present depreciated value $3,600,000. To some extent, the existence of these excess facilities will render unnecessary future capital investment by the reorganized company with respect to such of the facilities as may be required by the future growth of its traffic.

Considering the entire record, and taking into account the elements of value of the debtor's property, its past and present earnings and prospects for the future, as well as other pertinent factors discussed hereinabove, we conclude and find that the value of the property of the debtor for the purposes of this proceeding is $37,000,000, and that the total capitalization immediately after reorganization should not exceed approximately that amount.

Having determined the limits of permissible total capitalization, the next step is to determine the amount and kind of the justifiable funded debt and stock of the reorganized company. In so doing we must see that the fixed charges are such that they will be adequately covered by the probable earnings available for the payment thereof.

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Considering the earnings available for interest, as adjusted, in the 5-year period 1936-40, inclusive, we note that the minimum fixed-interest requirements of about $507,260 immediately after reorganization, as proposed under the committee plan, assuming $1,992,000 equipment-trust certificates to be outstanding, would have been earned by the debtor 1.45 times in the worst year of the period 1936-40, inclusive, about 2.68 times in the best year of that period, and slightly over 2 times in the average year. In 1941 they would have been earned about 3.15 times.

Prospective minimum earnings in the future likely to be realized for any 2- or 3-year period were estimated by a witness for the duPont estate as $590,000 a year after rehabilitation of the railroad. On the basis of this estimate the minimum earnings would exceed the maximum fixed charges immediately after reorganization under the committee's plan adjusted as to equipment obligations outstanding, by $82,740, or about 17 percent. We find that these maximum fixed charges should not be exceeded. In view of the necessity of making provision for the raising of some additional capital in the future, we are of the opinion, and find, that the fixed-interest requirement as proposed under the committee plan is reasonable and as such is approved by us.

Contingent charges under the committee plan would consist of (1) a mandatory (if earned) annual payment into a capital fund of 1 per cent of total annual operating revenues (or a maximum of $100,000 a year on the basis of $10,000,000 of total annual operating revenues) and an equal annual maximum additional payment, if earned and ordered paid by the board of directors; (2) interest on $9,000,000 general-mortgage bonds, amounting to $405,000 a year; and (3) a sinking-fund payment of $22,500 a year for retirement of general-mortgage bonds.

Total annual charges, both fixed and contingent, for interest, capital fund, and general-mortgage sinking-fund payments, would range, therefore, from a minimum of about

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$1,034,760 if the interest rate on thet first-mortgage bonds is 3¾ percent per annum and if only the mandatory capital fund payment is made, to a maximum of about $1,164,760 if the first-mortgage interest rate becomes 4 percent and the other additional capital-fund payment is made. Total indebtedness would amount to $22,992,000, or 62.14 percent of the total approved capitalization.

This ratio of bonded indebtedness to stock, in our opinion, would be proportionally too high under the circumstances of this case. Moreover, with estimated prospective average earnings of $1,268,000, for the next five years there would be available for dividends, before the payment of income taxes, only $233,240 as a maximum and $103,240 as a minimum. Considering this factor and the further fact that the average adjusted earnings available for interest in the 5-year period 1936-40, inclusive, were only $1,035,311, we find that the amount of general-mortgage 4½ percent bonds which would be justifiable should not exceed $4,500,000. Those would require that earnings be only approximately $999,700 annually, after the first-mortgage bonds began to draw 4 percent interest, to pay the contingent interest and all other prior requirements. A total indebtedness after reorganization of $18,492,000 would increase the probability of all contingent interest being wholly earned even with a moderate future increase of first-mortgage bonds to provide funds for necessary capital expenditures which might not produce additional revenues.

Since we have hereinbefore disapproved of the acquisition by the duPont estate trustees of the control of the reorganized carrier by the purchase of 400,000 shares of stock at $10 a share, it is not necessary to discuss the suggestion of those parties with respect to the issue of preferred stock. The remaining securities to be issued in the reorganization should consist of no-par value common stock.

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Treating the 450,000 shares of no-par value common stock hereinafter approved for issue, to have a total stated value of $18,508,000, the approved capitalization of the reorganized carrier will be as follows:

Fixed-interest debt	$13,992,000
Contingent-interest debt	4,500,000
Common stock, no-par value	18,508,000
Total	$37,000,000

The plan should also provide that the amounts stated above for fixed-interest debt, and therefore necessarily the total capitalization, insofar as they include equipment obligations, should be subject to variation to the extent, if any, that any equipment obligations are paid or reduced or additional equipment liabilities are incurred, and that any of the above amounts should be subject to variation to the extent which may be necessary, if so determined by the reorganization managers, to avoid the issue of scrip in denominations not expressible in even dollars or even hundredths of a share.

The plan should further provide that upon its consummation and the issue and distribution of the new securities, as herein approved, the existing mortgage bonds, should be surrendered to the reorganization managers and canceled, and the respective mortgages should be released of record and canceled.

III. PLAN RECOMMENDED.

A. Effective date of reorganization.

The effective date of reorganization in both plans filed in this proceeding is January 1, 1940. Under the committee plan, however, accrued interest would be paid on the first-mortgage bonds at the existing rate to and including the last day of the month preceding the consummation of the

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plan, and the new first-mortgage bonds would be dated as of, and would bear interest from, the first day of the month in which the plan is consummated.

As hereinbefore stated, this feature of the committee plan is part of the compromise proposed for the settlement of differences between the first-mortgage bondholders and the first and refunding bondholders. Representatives of the first-mortgage bondholders contend that, until the reorganization is consummated, the consideration for the interest reduction has not passed to the first-mortgage bondholders. Interest on the first-mortgage bonds has been paid as it has matured and is not in arrears. In view of current and prospective earnings we conclude and find that this provision in respect of the payment of interest on the first-mortgage bonds until consummation of the plan is fair and reasonable provided that such payments are subject to approval of the court. The need for capital expenditures which has been hereinbefore reviewed, requires that as much cash be available upon consummation of the plan as can reasonably and economically be conserved. For this reason, we find that the effective date of the plan should be January 1, 1942.[7]

B. Participation in reorganization.

All securities issued in accordance with the capitalization proposed herein will be available for distribution to present security holders.

1. Rights of creditors and stockholders.

(a) *Liens.*

Equipment-trust certificates outstanding on December 31, 1941, other than those issued under equipment trust, series D, (in which case the equipment lease was disaffirmed) consisted of $992,000 of receivers' 3-percent equipment-trust

[7] See pp. 25 and 26 *supra*, for discussion of cash position.

certificates, series I, dated November 24, 1939, and maturing serially to November 1, 1949, and $1,000,000 of trustees' 2¾-percent equipment-trust certificates, series J, dated November 1, 1941, and maturing serially to November 1, 1951.

The respective liens of the debtor's first mortgage and first and refunding mortgage and the disagreement with respect thereto have been described in a preceding section of this report. The first-mortgage bonds bear interest at the rate of 4½ percent per annum, payable semiannually on June 1 and December 1 of each year. It is being paid currently and none is in arrears. On January 1, 1942, interest unpaid since the last interest-payment date will have accrued in the amount of $45,000, making the total claim of the first-mortgage bondholders $12,045,000 as of that date.

The first and refunding mortgage bonds, all of which are series A, bear interest at the rate of 5 percent per annum, payable semiannually on March 1 and September 1 of each year, and mature September 1, 1974. Of the total amount of such bonds outstanding, $15,000,000 are dated October 10, 1924, $15,000,000 May 25, 1925, and $15,000,000 April 1, 1926. As of January 1, 1942, interest will have accrued and be unpaid in the amount of $24,375,000. We have held in other reorganization cases, and so decide in this proceeding, that the principal amount of the claims of secured creditors should be increased by the amount of accrued and unpaid interest. *Sexton* v. *Dreyfus,* 219 U. S. 339; *Louisville Bank* v. *Radford,* 295 U. S. 555, 597, footnote 30. The total claim of the first and refunding mortgage bondholders as of January 1, 1942, will, therefore, amount to $69,375,000.

(b) *General creditors' claims.*

Claims of general creditors filed in the receivership proceeding aggregated $3,468,905. The chief accounting officer for the receivers and for the debtor testified at the hearing

before us that the amount of such claims outstanding as of March 1, 1941, which have not been paid, is $3,421,577. These claims can be classified as follows:

(1) Open account indebtedness to the estate of Mary Lily (Flagler) Bingham	$ 400,000
(2) Open account indebtedness to Florida East Coast Car Ferry Company	1,500,000
(3) Principal amount of deficiency judgment on series-D equipment trust (lease disaffirmed)	820,658
(4) Tort claims	25 844
(5) Other claims	675,075
Total	3,421,577

The witness testified that items (1), (2), and (3) are not in dispute and are not preferred, and that some of the remaining claims are uncontested and entitled to priority, while, in his opinion, some of the others cannot be supported by the claimants. He estimated that about $2,800,000 of the total of all general claims are valid.

(c) *Stock.*

The debtor's stock outstanding consists of common stock of a par value of $37,500,000.

(d) *Undisturbed securities.*

Both proposed plans of reorganization provide, and the evidence shows that the equipment obligations are well secured and (except those under which the lease or leases of equipment have been or may be disaffirmed by the trustees of the debtor) should be assumed undisturbed by the reorganized company. This provision of the plans is approved, and we find that the interests of the holders of equip-

ment obligations so assumed will not be materially and adversely affected by the plan.

2. General basis of compromise recommended.

Both plans propose that the present first-mortgage 4½-percent bondholders receive in satisfaction of their claim, new first-mortgage bonds having an undisputed first lien upon substantially the entire property of the debtor but maturing at a later date than the present bonds and bearing a lower rate of interest. The interest rate proposed under the committee plan is 3¾ percent per annum, increasing to 4 percent if earnings available for fixed charges equal or exceed $1,250,000 per annum for any two consecutive years after consummation of the plan. Under the duPont plan the rate would be 4 percent per annum. Under the committee plan, the maturity date of the outstanding first-mortgage bonds, which is 1950, would be extended to a date which would be 40 years after the date of issue of the new bonds, and, under the duPont plan 30 years thereafter. The decrease in interest rate and deferment of the maturity date of their obligations, as well as an opening up of the mortgage under the committee plan for the issuance of bonds to finance future necessary capital expenditures, constitute the sacrifice which it is proposed that the present first-mortgage bondholders make in compromise of the lien dispute. In return for these concessions, they would obtain under either plan an undisputed first lien upon all, or substantially all, the property of the reorganized company.

The present first and refunding mortgage bondholders, under either plan, would receive the entire issue of new general-mortgage income bonds and additionally, under the committee plan, all of the presently issuable stock of the reorganized company, in lieu of their $45,000,000, principal amount, of fixed-interest bonds, upon which $24,375,000 of interest was in arrears on January 1, 1942. The first and refunding bondholders have received no interest on their

bonds for about 10 years and the compromise under the terms of either plan would enable them to receive immediate cash payments, as earned, of interest, and dividends, which otherwise might be held up by litigation, and would give them the benefit of a present reduction in fixed-interest charges ahead of their equity. Also, under the committee plan, they would obtain a further advantage in the opening up of the first mortgage to provide a medium of financing future capital requirements.

Both sides to the lien controversy would benefit by the prompt placing into effect, without the delay which would be entailed by long and expensive litigation, of a plan whereby the debtor's property would be promptly returned to its owners with a sound capital structure under which the fixed-interest requirements will bear a proper relationship to probable earnings.

Before a decision can be reached as to the fairness of a compromise, it is necessary first to decide (1) the date of maturity of the new first-mortgage and general-mortgage bonds, (2) the interest rate on the new first-mortgage bonds and (3) the extent, if any, to which the new first mortgage should provide for the future issue of bonds thereunder.

In our opinion the provision in the committee plan as to the date of maturity of the new first-mortgage bonds affords a sufficient deferment of maturity to enable the reorganized company, upon return to its owners, to develop its earning power and arrange for repayment or refunding of the new fixed-interest indebtedness when it falls due without the danger of default occurring at that time. The maturity date, 2015, provided in the committee plan for the new general-mortgage bonds is advisable and preferable to the earlier date provided for in the duPont plan.

The reduced interest rate on the new first-mortgage bonds, as provided in the committee plan, is reasonable in view of probable earnings and is desirable in order to permit such increase in fixed-interest charges as may be necessary to provide a practicable medium for the obtaining of funds

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for future capital expenditures without interposing unduly large interest requirements ahead of the new securities issued to the present first and refunding bondholders. As to the extent to which the new first mortgage should provide for the future issue of additional bonds, the record is convincing that a provision for the issue of a maximum of $6,000,000 of additional bonds, under conditions which will be hereinafter recommended, would adequately meet any probable future capital needs. *All of these provisions of the committee plan are approved and we find that a plan based upon such a compromise is fair and equitable.* Although under the plan herein approved holders of the 5-percent bonds will receive a smaller amount of new general-mortgage bonds than contemplated by the compromise, they will receive all such bonds to be issued in the reorganization as well as all of the capital stock to be issued in the reorganization.

3. Distribution of new securities.

(a) First-mortgage bonds.

Under both plans, the present first-mortgage bondholders would receive an equal principal amount of new first-mortgage bonds. The evidence hereinbefore reviewed is conclusive that the claim of the first-mortgage bondholders is entitled to full satisfaction. The administrative court both during receivership and trusteeship has ordered current payment of interest on these bonds. *On the basis of the record and the terms of the compromise approved by us, we find that the present first-mortgage bondholders should receive in the reorganization an equal principal amount of the first-mortgage bonds of the reorganized company and that their claim will be satisfied in full by such treatment.*

(b) First and refunding mortgage bonds.

In view of the amount ($69,375,000) of the claim of the first and refunding mortgage bondholders, and considering

the debtor's past, present, and probable future earnings, the amount of prior indebtedness and annual charges thereon, and the extent of the lien of the mortgage, both as undisputed and as contended for by these bondholders, we find that, within the recommended permissible capitalization and annual charges, the first and refunding mortgage bondholders are entitled to the entire equity in the property remaining after satisfaction of prior indebtedness.

It follows that the first and refunding mortgage bondholders should be assigned the $4,500,000, principal amount, of general-mortgage bonds and all the shares of no-par common stock of the reorganized company, which would be immediately outstanding upon reorganization. While these bondholders thus will receive only one-half as many new general-mortgage bonds under the plan approved herein as under either the committee or duPont plans, they will own all the equity remaining after satisfaction of the first-mortgage claim and, *except as larger amounts may be required to pay taxes* and the sinking fund, should realize upon the securities allotted to them a share of the future earnings of the reorganized company about equivalent to what they would receive under the committee plan. We find, that a total of 450,000 shares of new common stock should be issued. Each holder of $1,000, principal amount, of first and refunding mortgage bonds would thus receive $100, principal amount, of new general-mortgage 4½-percent bonds, series A, and 10 shares of new no-par-value common stock.

(c) *General creditors and stockholders.*

Neither of the proposed plans provides for any satisfaction of unpreferred claims of general unsecured creditors or the claim of stockholders. Claims prior to those of the general creditors will amount to about $82,500,000 as of January 1, 1942, while the maximum permissible capitalization approved herein is $37,000,000.

Unless there are assets of the debtor not subject to the lien of the present mortgages, it is clear that the equities of general creditors not entitled to priority, and consequently of the stockholders, should be found to have no value.

The record shows that there are certain assets of the debtor which might be found not subject to the liens of its mortgages. The receivers estimate the value of such assets at about $1,000,000, an amount which the 5-percent committee thinks is excessive. The duPont committee's estimate is about $60,000. A decision by the court as to which assets are not subject to the lien of the mortgages is necessary before their approximate value can be determined.

These assets consist of parcels of real estate, stocks and bonds and other assets not specifically described in, nor patently encumbered by, the debtor's mortgages. The parcels of land are 6 in number, of a total value of $28,506, as estimated by the debtor's valuation department. The present values of the other assets were estimated by the receivers, one of whom testified at the hearing with respect to them. The stocks comprise 2,691 shares of common stock of the Fruit Growers Express Company of a par value of $269,100, a book value of $118,600 and an estimated value of $269,100; 6 shares of no-par value common stock of the Railway Express Agency, Incorporated, of a book value of $600 and the same estimated value; 7,497 shares of common stock of The Peninsular & Occidental Steamship Company of a par value of $749,700, a book value of $556,524, and estimated as having no present value; 160 shares of preferred stock of the United States Sugar Corporation of no-par-value and an estimated value of $12,800; and 3,572 shares of common stock of the same company of a book value of $32,036 and estimated present value of $14.

The bonds consist of 1,352 registered, $1,000 denomination, first preferred mortgage 6 percent series-B gold bonds due January 1, 1962 of The Peninsular & Occidental Steam-

ship Company, of a face value of $1,352,000, a book value of $602,001 and an estimated present value of $614,407.

The other possibly "free assets" comprise advances to the Railway Express Agency, Inc. of $22,999, and having the same estimated value; interest on these advances of $96, having an equal estimated present value; certificates of indebtedness of the cities of Fort Pierce and Titusville, Fla. of a total estimated present value of $6,311, representing deferred refunds of taxes and other assessments; an amount of $106 due from a closed bank, for which no estimate of value is given; meter deposits with various towns, $70; a scrip certificate for $960 of Location E-271 drawn by the U. S. General Land Office, of unknown present value, and a certificate of the Department of Agriculture of the State of Florida of a book value of $231 and unknown present value.

In any event, since unsecured general claims approximate $3,000,000 and the present first and refunding mortgage bondholders would have an equal claim with the general creditors for participation in such free assets to the extent that their claim of about $69,375,000 is not satisfied under the plan approved, it is apparent that the amount of such assets accruing to general creditors would be small and impracticable of distribution. No general creditor has made representations during the proceeding, either at the hearing or by brief. An allotment of new common stock to such creditors would be so insignificant in amount as to present insurmountable difficulties in its distribution. We find that the equity of the holders of unsecured claims not entitled to priority over the mortgages and the equity of the stockholders are without value, and that these creditors and stockholders should not be permitted to participate in the plan of reorganization.

There is attached hereto an appendix, showing among other things, the distribution of the new securities to the creditors.

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(d) *Summary.*

The new capitalization and charges (omitting capital payments) which would result immediately upon reorganization would be as follows:

Item	Principal	Charges
Fixed-interest debt*	$13,992,000	$507,260
Contingent-interest debt	4,500,000	202,500
Total debt	18,492,000	709,760
Common stock	18,508,000	
Total capitalization	37,000,000	

C. Description and provisions of new securities

1. First-mortgage bonds

Under the duPont plan the new first mortgage would be a direct first lien, subject only to liens upon equipment, upon all properties and assets of every kind owned by the reorganized company upon consummation of the plan or thereafter acquired, including, without limitation, securities, equipment, and the equity in such equipment as is subject to equipment obligations without exception.

The committee plan would except from the lien of the first mortgage such property or assets not necessary for the operation of the railroad which the reorganization managers may unanimously determine, with the approval of the court, should not be so subject. The record discloses no reason for such an exception and the reorganization managers, whose only or, at least, primary function is to execute the approved plan, should not have any such decision, even with the approval of the court, as to which property or assets should

* Includes $1,992,000 of equipment-trust certificates, the remainder being first-mortgage bonds with interest at 3¾ percent per annum, which interest would be increased $30,000 a year if earnings available for fixed charges amount to or exceed $1,250,000 a year for any two consecutive years after consummation of the plan.

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be excluded. This proposed provision of the first mortgage is not approved.

The committee plan provides, as to after-acquired property, for the following exceptions from the lien of the mortgage:

(1) If the reorganized company shall acquire substantially all of the properties of any other company constituting a Class I carrier as defined by the rules then in force of the Commission or other public regulatory body having jurisdiction at the time, such properties shall not be subject to the lien of the first mortgage unless acquired in whole or in part (a) by the use of first-mortgage bonds or their proceeds or (b) by moneys deposited under the first mortgage;

(2) If the reorganized company shall be consolidated with, or shall be merged into, or shall sell its assets substantially as an entirety to, any other company which at the time is a Class I carrier as defined by the rules then in force of the Commission or other public regulatory body having jurisdiction at the time, no properties theretofore owned or thereafter acquired by such other company shall be subject to the lien of the first mortgage except properties thereafter acquired which shall be appurtenant or incident to properties subject to the lien of the first mortgage, or which shall be within the maintenance or replacement covenants of the first mortgage, or which shall be acquired in whole or in part (a) by the use of first-mortgage bonds or their proceeds or (b) by moneys deposited under the first mortgage; and

(3) If the reorganized company shall acquire additional presently existing railroad properties, or if it shall acquire securities representing 50 percent or more of the voting power in any company owning such railroad properties, of such a nature and in such a manner

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as to comply with each and all of the following provisions:

(a) no first-mortgage bonds or their proceeds or moneys deposited under the first mortgage shall be used for the acquisition thereof;

(b) one-half or more of the consideration paid therefor shall consist of general-mortgage bonds or their proceeds or moneys deposited under the general mortgage;

(c) such railroad properties shall constitute a line of railroad 50 miles or more in length; and

(d) such railroad properties shall not constitute a replacement or relocation of any railroad properties then subject to the lien of the first mortgage and shall not consist of mileage paralleling, between two or more local points, mileage subject to the lien of the first mortgage;

then such properties or such securities shall be subject to the direct first lien of the general mortgage subject only to liens existing thereon at the time of such acquisition.

Paragraphs (1) and (2) above constitute reasonable exceptions to the after-acquired property clause and are approved. Paragraph (3) constitutes a concession to the holders of the present first and refunding mortgage bonds and obviously represents one feature of the compromise of the lien question which has been referred to herein. In view of the concessions to be made by the first and refunding bondholders, we approve the provision contained in this paragraph (3) of the committee plan, but, other than as to properties specifically excepted in such paragraphs (1), (2), and (3), the first mortgage should be a first lien upon all the property of the reorganized company, owned upon consum-

mation of the plan or thereafter acquired, including securities of other companies.

The authorized amount of bonds issuable under the first mortgage should be limited to $18,000,000 at any time outstanding, except as this limit may be raised with the consent of holders of 66⅔ percent in aggregate principal amount of first mortgage bonds outstanding, as hereinafter provided. Of this authorized amount, $12,000,000, designated as series A, should be issued in the reorganization, to mature 40 years after date, and $6,000,000 should be reserved for future issue. The provision in the committee plan as to future issuance of a maximum of $500,000 of "free bonds" is approved.[8] Bonds should be issuable from time to time to reimburse the reorganized company for expenditures made after December 31, 1941, for the improvement, construction, completion, or acquisition by the reorganized company of any property, except equipment, or of any part of or interest or right in any property, except equipment; provided that the same shall be used or useful upon or in connection with the railroads of the reorganized company or the operation or conduct thereof, shall be, or become, subject to the first lien of the first mortgage, and the title thereto shall be vested in the reorganized company. Bonds also should be permitted to be issued against deposited cash which may be paid out to reimburse the reorganized company for expenditures made after December 31, 1941, for the purposes set forth in the foregoing sentence. Bonds should be issuable and deposited cash paid out for such purposes, only to the extent that the principal amount of all bonds (other than "free bonds") issued for such purposes plus the amount of deposited cash paid for such purposes, shall not in the aggregate exceed 75 percent of the increase since December 31, 1941, in the reorganized company's investment in road not charged to the capital funds, which investment should be considered to be the investment made in road less any

[8] p. 10.

accrued depreciation on the company's books with respect thereto.

The first mortgage should further provide that bonds may be issued for the purchase, payment, redemption, or refunding of any bonds secured by the first mortgage, except that bonds retired through the operation of any capital fund or sinking fund which may be established for any series of first-mortgage bonds shall not be refundable by the issuance of other first-mortgage bonds.

No bonds issued under the first mortgage should be permitted to be pledged if, as a result of such pledge, the aggregate principal amount of all first-mortgage bonds then under pledge, in excess of the principal amount of all obligations so secured, will exceed 10 percent of the aggregate principal amount of all first-mortgage bonds then authenticated and uncanceled.

The provision of the committee plan as to the future issuance of "emergency bonds", including the provision for the establishment of a sinking fund for retirement thereof, is approved.[9]

The first-mortgage bonds, series A, to be issued upon reorganization, should bear fixed interest at the rate of 3¾ percent per annum, payable semiannually, increasing to 4 percent per annum for all income periods following any two consecutive calendar years after consummation of the plan, in which income available for fixed charges as reported to the Commission amounts to $1,250,000 or more per annum. In case of any unification of the properties of the reorganized company with the properties of any other company, involving a combination of earnings and elimination of separate accounts, income available for fixed charges for the purpose of this paragraph should be determined in such manner as may be agreed upon by the consolidated company and approved by holders of first-mortgage bonds, as follows: (a) Upon the vote or written consent of the holders of 75 percent of the principal amount of first-

[9] p. 10.

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mortgage bonds outstanding at the time, or (b) if a meeting shall be held upon at least 3 weeks' notice and if at such meeting the holders of less than 75 percent of the principal amount of first-mortgage bonds outstanding at the time shall be present in person or by proxy; and if such meeting shall be adjourned for at least 3 weeks, and if at such adjourned meeting there shall again be less than the holders of 75 percent of the principal amount of first-mortgage bonds present in person or by proxy, and if such meeting shall again be adjourned for at least 3 weeks, then at such second adjournment the vote of 75 percent of the principal amount of the first-mortgage bonds present in person or by proxy at the meeting shall constitute the approval of the holders of the first-mortgage bonds for the purposes of this paragraph.

The first-mortgage bonds, series A, to be issued in reorganization should be redeemable in whole or in part at any time on 30 days' notice at their principal amount and accrued interest plus a premium on such principal amount, as follows: 5 percent for the first 10 years, decreasing thereafter 1 percent for each 10-year period, except that during the last 10-year period the premium shall be 1 percent for the first seven years and nothing for the last three years thereof.

The first mortgage should provide that on May 1 of the tenth calendar year following the issue of series-A bonds, and on May 1 of each year thereafter, so long as any series-A bonds are outstanding, the reorganized company shall pay to the trustee under the mortgage as an installment on a sinking fund, a sum equal to one-half of 1 percent of the largest principal amount of such bonds at any time previously authenticated and delivered, such payments to be made if sufficient available net income for the previous year is available therefor after payment of all fixed charges and capital-fund payments but before payment of contingent interest. Such payments should be cumulative only to the extent that they are earned and unpaid. The sinking fund

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hould be applied to retirement of first-mortgage series-A onds by purchase in the open market or by call for tender t not exceeding the current redemption price plus accrued nterest or by redemption. All first-mortgage bonds, series , so acquired should be required to be canceled and no onds of any kind issued to refund them.[10]

All first-mortgage bonds other than the series-A bonds o be issued in the reorganization and any emergency bonds, hich may be issued, should be subject to such limitations nd restrictions as may be specified in the first mortgage, hould be payable on such date or dates, should be issued such denominations, should bear interest at such rates, nd should contain such provisions as to redemption, con- ersion, taxes, place or places and money or moneys of ayment, registration, and sinking funds, and should have ich other characteristics, as may be prescribed by the oard of directors of the reorganized company at the time f issue, but all first-mortgage bonds should be equally ecured by the lien of the first mortgage.

The first mortgage should contain provisions giving the olders of 66⅔ percent in aggregate principal amount of utstanding bonds to be affected by the business to be sub- itted to a bondholders' meeting, the power by resolution such meeting to take the various actions therein specified cluding the power to make any modification in or addition the provisions of the first mortgage, or the rights and bligations of the reorganized company or the rights of the olders of the bonds of all or any series, provided that the ondholders shall have no power to (a) extent the maturity any bonds, or reduce the rate of interest thereon, or herwise modify the terms of payment of principal (other an a modification of the provisions of any sinking fund redemption provision of bonds) or interest, without the nsent of the holder of each bond so affected, or (b) effect

[10] The committee plan contains no provision for a sinking fund for first-rtgage bonds, series A. The duPont plan provides for semiannual sinking-nd payments of $250,000 each, commencing 5 years after date of issue of bonds.

a reduction of the percentage required for any action authorized to be taken by the bondholders. The application of such provisions should be conditioned upon approval by this Commission of any proposed change in the sinking-fund provisions or any other provision of the first mortgage, incorporated therein pursuant to the requirements of the plan. In case any series of bonds is affected differently from any other series by the action proposed, the vote of holders of 66⅔ percent in aggregate principal amount of each such series so differently affected shall also be required. Provision should also be made whereby bondholders may vote at such meeting by proxy.

2. General-mortgage bonds.

The general mortgage should constitute a lien, subject to the lien of the first mortgage so far as it attaches, and any prior liens upon all property of the reorganized company owned upon consummation of the plan and thereafter acquired, and a first lien on other property to the extent permitted by the terms of the first mortgage.

The general-mortgage bonds should be unlimited as to total principal amount, should be issuable from time to time in different series, subject to such limitations and restrictions as may be specified in the general mortgage, should be payable on such date or dates, have such denominations, bear interest at such rates and contain such provisions as to accumulation of interest, redemption, conversion, taxes, place or places and money or moneys of payment, registration, and sinking funds, and have such other characteristics, as may be prescribed by the board of directors of the reorganized company at the time of issue, but all general-mortgage bonds should be equally secured by the lien of the general mortgage. Bonds of any series issued under the general mortgage (except the series to be authenticated in reorganization) should bear fixed or contingent interest as may be determined by the board of directors of the reorganized company. The general mortgage should

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provide that bonds issued in the future in addition to the income bonds to be issued in the reorganization, should be issuable from time to time to refund outstanding first-mortgage bonds or general-mortgage bonds, or in lieu of first-mortgage bonds for the purposes and subject to the same restrictions applying to the issue of additional first-mortgage bonds as stated in the next preceding section (1) of this report, to the extent that first-mortgage bonds are not issued for such purposes.

The general mortgage should contain provisions giving to the holders of 66⅔ percent in aggregate principal amount of outstanding bonds to be affected by the business to be submitted to a bondholders' meeting the power by resolution at such meeting to take the various actions therein specified including the power to make any modification in or addition to the provisions of the general mortgage, or the rights and obligations of the reorganized company as set forth therein or the rights of the holders of the bonds of all or any series, provided that the bondholders shall have no power to (a) extend the maturity of any bonds, or otherwise modify the terms of payment of principal (other than a modification of the provisions of any sinking fund) or modify the terms of payment of accumulated interest, without the consent of the holder of each bond so affected, or (b) effect a reduction of the percentage required for any action authorized to be taken by the bondholders. As in the case of the first mortgage, the application of such provisions should be conditioned upon approval by this Commission of any proposed change in the sinking fund provisions, or any other provision of the general mortgage incorporated therein pursuant to the requirements of the plan. In case any series of bonds is affected differently from any other series by the action proposed, the vote of holders of 66⅔ percent in aggregate principal amount of each such series so differently affected shall also be required. Provision should be made whereby bondholders may vote at such a meeting by proxy.

The general-mortgage bonds to be issued in reorganization should consist of $4,500,000, principal amount, of income bonds, series A, (hereinafter referred to as income bonds), which should be authenticated and delivered ratably to holders of the now outstanding first and refunding mortgage 5-percent bonds. The income bonds should be dated January 1, 1942, mature 75 years after date, bear interest at the rate of 4½ percent per annum, due and payable as hereinafter provided and should be redeemable in whole or in part at the option of the reorganized company or for the sinking fund (hereinafter described) on May 1 in any year on 30 days' notice that their principal amount plus (a) full interest for the last preceding year and all unpaid accumulated interest (as defined) for prior years and (b) interest at the rate of 4½ percent per annum from the last preceding December 31 to the redemption date.

Interest on the income bonds should be cumulative up to 13½ percent, and when that maximum is reached no further accumulations should be made unless the amount of accumulations is reduced, in which case further accumulations representing calendar years subsequent to those for which interest previous to such reduction had been accumulated and unpaid, should be allowed up to the maximum of 13½ percent. Interest should be mandatorily payable, (except as hereafter provided) only out of available net income after deduction of capital-fund payments, and any sinking-fund payments for first-mortgage bonds which may be deductible before such interest. Accumulated interest should be mandatorily payable on May 1 of any subsequent year to the extent funds may be available therefor, or in any event (whether earned or not) at the maturity or on redemption of the income bonds. Payments of interest so made should be considered as applied to interest accrued for the last preceding calendar year before being applied to accumulations. The board of directors of the reorganized company should be permitted at any time in its discretion to pay

out of any funds lawfully available therefor any interest due or accrued on income bonds, even if not earned.

No interest should be paid on income bonds in any year if the amount would be less than one-fourth of 1 percent, and all payments should be in multiples of one-fourth of 1 percent. Any excess available for interest but not paid because of the foregoing provision, should be reserved and added to the income applicable to interest on the income bonds for succeeding calendar year or years. If there are outstanding general-mortgage bonds of different series bearing contingent interest, the amount applicable to interest on such bonds should be distributed among the respective series in proportion to the unpaid interest at the time accumulated on the bonds of such series, respectively.

The general mortgage should provide for a sinking fund for income bonds, the annual payments to be made on May 1, beginning May 1, 1942, and to be equal to one-half of 1 percent[11] of the largest principal amount of income bonds at any time previously authenticated and delivered, such payments to be made if sufficient available net income for the previous year is available therefor and after any sinking-fund payments for first-mortgage bonds. The mortgage should provide that such sinking fund shall be applied to retirement of income bonds by purchase or redemption at not exceeding the principal amount thereof and interest payable on redemption. All income bonds so acquired should be required to be cancelled and no bonds could be issued under the general mortgage to refund them.

(a) *Capital fund*

Under the duPont plan, annual payments into the capital fund would be wholly discretionary with the board of directors of the reorganized company up to a maximum equal to 2 percent of railway operating revenues for the year, while, under the committee plan, payment of 1 percent of

[11] The committee plan provides for only one-fourth of 1 percent sinking-fund payment on income bonds.

total railway operating revenues for such year would be mandatory if there should be net income available therefor (as later described), and an additional amount up to a total maximum of 2 percent of total railway operating revenues might be paid if the board of directors should so determine.

In view of the capital improvement requirements of the reorganized company in the near future, which have been hereinbefore discussed, the plan herein approved will provide that for the first 10 years after the effective date of the plan, the annual capital-fund payments should equal 2 percent of the annual railway operating revenues and be wholly mandatory to the extent that net income is available therefor. Thereafter annual payments equal to 1 percent should be mandatory, if net income be available therefor, and an additional 1 percent discretionary with the board of directors of the reorganized company.

The committee plan proposes that the capital fund may be used to reimburse the treasury of the reorganized company for capital investments, to retire first-mortgage bonds, to pay any debt at its maturity or to pay fixed charges but to the extent not so expended or appropriated to meet liabilities incurred, before the end of the year in which it shall have been set aside or within 3 months thereafter, may be accumulated only up to $300,000.

In our opinion, if any sums set aside in the capital fund are used to pay any fixed charges, no contingent charges and no dividends should be paid until the capital fund has been reimbursed for the funds so used.

Except for the modifications approved above, the approved plan should contain provisions as to the capital fund substantially the same as those in the committee plan.[12]

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[12] These provisions are as follows:

Available Net Income for each calendar year to the extent of 1% of total railway operating revenues for such year shall, and, if the Board of Directors of the New Company shall so determine, to the extent of 2% of such revenues may, be applied to the creation of a Capital Fund. The appropriation for the Capital Fund shall be reduced by the amount of any charges for depreciation of roadway and structures made in such calendar year to the extent that such charges exceed the amount which would have been charged to operating expenses in connection with the property for which depreciation is so charged for such

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(b) *Determination and application of net income.*

Provisions of the plan for determining and applying net income should be substantially the same as those provided in the committee plan except that (1) two years should be added to the dates therein stated upon which various provisions should be effectvie to conform to the effective date of the plan herein approved, (2) the amount of the annual mandatory capital-fund payments should be modified as described in the preceding paragraph of this report, (3) the

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calendar year under present Interstate Commerce Commission accounting rules, and may, in the discretion of the Board of Directors of the New Company be increased by the amount, if any, by which Available Net Income for the last preceding calendar year shall have been less than the maximum amount permitted for the Capital Fund for such year, but no such deficiency shall be made up for more than one preceding calendar year. Moneys in the Capital Fund may be applied to, or used to provide for, or to reimburse the treasury of the New Company for, Capital Investments, as defined by the Interstate Commerce Commission Classification of Income, Profit and Loss and General Balance Sheet Accounts for Steam Roads, Account No. 701 Investment in Road and Equipment, or such substituted account as may at the time be in effect, to the extent that such Capital Investments have been made or contracted for during such calendar year or within three months thereafter, but including therein improvements to equipment, payments made upon new equipment, or initial and principal payments upon equipment leased under equipment trusts or purchased under conditional sale agreements, only to the extent that such payments during such calendar year shall in the aggregate exceed depreciation of equipment charged against income for such calendar year, provided, however, that

(a) the Capital Fund may be applied only to such part of the cost of Capital Investments as hereinabove defined as remains after deducting therefrom all retirements of roadway and structures charged to operating expenses in such calendar year;

(b) to the extent that expenditures are so provided for or reimbursed out of the Capital Fund, the Company shall not thereafter have the right to issue any bonds or other evidences of indebtedness or withdraw deposited cash, to capitalize or reimburse such expenditures; provided, however, that such expenditures (if for purposes for which First Mortgage Bonds or General Mortgage Bonds may be issued) may, within such limits, if any, as may be specified in the First Mortgage or the General Mortgage, be used to supply, in whole or in part, the excess of capital expenditures required to be certified under either such Mortgage over the principal amount of the bonds that may be issued or the amount of deposited cash that may be withdrawn under the terms thereof; and

(c) any amount which is available for the Capital Fund under the foregoing provisions may be used, in addition to the uses hereinbefore allowed, to retire First Mortgage Bonds, to pay any debt at the maturity thereof, or to pay fixed charges, but any amount so available which is not expended, or appropriated to meet liabilities incurred, before the end of the year in respect of which it shall have been set aside or within three months thereafter, may be accumulated up to $300,000, but any amount in excess of such accumulation shall not be carried forward.

provision for application of available net income immediately after capital-fund payments should include a requirement for sinking-fund payments hereinbefore provided for on first-mortgage bonds, series A, out of available net income remaining after any sinking-fund payments for emergency bonds, (and thereafter for any sinking-fund payments which may be provided for any future issues of first-mortgage bonds other than emergency bonds) and the provision in the committee plan as to priority of the sinking-fund payments on such future issues of first-mortgage bonds will be stricken;[13] and (4) in computing available net income for the period between the effective date of the plan and the date of consummation, fixed interest should be deducted at the rate of 4½ percent on the old first-mortgage bonds up to the last day of the month preceding consummation of the plan, instead of as provided by the committee. Expressed in general terms, the approved plan will provide

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[13] These provisions, with the description of the capital fund omitted, are as follows:

Available Net Income shall be determined for each calendar year, on or before May 1 of the following year, beginning with the calendar year 1940, and continuing thereafter so long as any Income Bonds remain outstanding. When no Income Bonds remain outstanding, the provisions of this Subdivision G shall cease to be operative.

Available Net Income for each such calendar year shall be determined by deducting all fixed charges of the New Company, accrued during such calendar year, from the New Company's income available for fixed charges for such calendar year (determined in accordance with the accounting rules of the Interstate Commerce Commission or other authority having jurisdiction in the premises at the time, or, to the extent not governed by such accounting rules, in accordance with sound accounting practice); provided, however, that Available Net Income for any period after December 31, 1939, until the New Company comes into ownership and possession of the properties now operated by the Receivers shall be computed as if the New Company had come into such ownership and possession on January 1, 1940 and had issued the new securities issuable under the Plan as of that date, except that actual fixed charges other than fixed charges on the 5% Bonds shall be used in computing Available Net Income.

Available Net Income shall be ascertained for each such calendar year, as the accounts shall be stated on the books of the New Company when its accounts are closed for such calendar year, without adjustments, except that: (1) if in respect of any calendar year the Available Net Income is a deficit, the amount of such deficit may, in the discretion of the Board of Directors of the New Company, be carried forward and be deducted in determining Available Net Income for the succeeding calendar year or calendar years until such deficit or accumulated or remaining deficits) be extinguished by earnings which, in the absence of such deficit or deficits, would be Available Net Income; and

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that net income be determined as that remaining after deducting all fixed charges of the reorganized company accrued during each calendar year from income available for fixed charges for such years, with certain allowable adjustments, and that it shall be applied to the following purposes and in the following order, (1) capital-fund payment, (2) any sinking-fund payment established for "Emergency Bonds", and thereafter any sinking-fund payment on any series-A first-mortgage bonds and thereafter any sinking-fund payment on other first-mortgage bonds, (3) current and then accumulated unpaid interest on income bonds, (4) any sinking-fund payment for general-mortgage bonds, including that provided for the income bonds, and (5) any proper corporate purpose including dividends on stock.

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(2) any adjustments necessary to correct the income accounts of any prior year shall be made by appropriate entries which may either be made in the accounts of the current year or, in the discretion of the Board of Directors of the Railroad Company, and subject to the approval of the Interstate Commerce Commission or of such other governmental agency, if any, as at the time may have jurisdiction over the accounting practices of the Railroad Company, may be made, in whole or in part, in the accounts of any subsequent year or years, and any such debits or credits made in the accounts of any year to adjust entries in the income accounts of prior years shall be treated as income items for the year in which entered on the books, whether cleared through income or profit and loss accounts.

Available Net Income for each calendar year shall be applied to the following purposes and in the following order:

(1) To capital fund payments.

(2) Any then remaining Available Net Income for any calendar year shall, to the extent required, be applied to the payment of any sinking fund established for Emergency Bonds.

(3) Any then remaining Available Net Income for any calendar year shall be applied to the payment on the next succeeding May 1, of interest on the outstanding Income Bonds accrued during the last preceding calendar year, and of any accumulated unpaid interest thereon.

(4) Any then remaining Available Net Income for any calendar year shall, to the extent required, be applied to the payment on the next succeeding May 1 of any sinking fund provided for General Mortgage Bonds, including the sinking fund provided for the Income Bonds.

(5) Any then remaining Available Net Income for any calendar year may be applied to any proper corporate purpose of the New Company, including dividends on the Capital Stock of the New Company.

In case any sinking fund shall be established for any future series of First Mortgage Bonds other than the Emergency Bonds the appropriation for any such sinking fund shall have such priority with respect to payment from Available Net Income as may be determined by the Board of Directors of the New Company.

3. Common stock.

There should be authorized 450,000 shares of new common stock without par value, the entire amount to be issued in reorganization to holders of outstanding first and refunding mortgage bonds as hereinbefore provided. Holders of common stock should be entitled to one vote a share on all matters, except that directors of the reorganized company should be elected by cumulative voting. The committee plan contains a provision for the authorization of an additional number of shares of common stock, not in excess of 45,000 shares, to be issuable from time to time to officers and other executives of the reorganized company for such cash consideration, at such times, and upon such terms as the board of directors may from time to time determine. It

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No interest need be paid on Income Bonds if the amount to be paid is less than ¼ of 1%. Any excess available for interest but not paid because of the foregoing provision shall be reserved and added to the income applicable to interest on the Income Bonds for the next succeeding calendar year.

If there are outstanding General Mortgage Bonds of different series bearing contingent interest, the amount applicable to interest on such Bonds shall be distributed among the respective series in proportion to the unpaid interest at the time accumulated on the Bonds of such series, respectively.

Dividends may be paid on stock of any class out of the income of any calendar year prior to the close of such calendar year, if, but only if, prior to the declaration of such dividends the Board of Directors of the New Company shall have determined that the Available Net Income for such year applicable for the purposes specified in the foregoing paragraphs (2), (3) and (4) will be more than sufficient to pay the amounts payable out of such Available Net Income pursuant to said paragraphs and such amount shall have been deposited in trust for the purposes specified in said paragraphs.

In case of any unification of the properties of the New Company with properties of any other company, as a result of which it becomes desirable to combine the earnings of such properties and eliminate separate accounts, income available for fixed charges for the purpose of computing Available Net Income applicable to interest or sinking fund for the Income Bonds for any succeeding fiscal year may be determined in any manner approved by holders of Income Bonds as follows: (a) upon the vote or written consent of the holders of 75% of the principal amount of Income Bonds outstanding at the time, or (b) if a meeting shall be held upon at least three weeks' notice and if at such meeting the holders of less than 75% of the principal amount of Income Bonds outstanding at the time shall be present in person or by proxy, and if such meeting shall be adjourned for at least three weeks, and if at such adjourned meeting there shall again be less than the holders of 75% of the principal amount of Income Bonds present in person or by proxy, and if such meeting shall again be adjourned for at least three weeks, then at such second adjournment the vote of 75% of the principal amount of the Income Bonds present in person or by proxy at the meeting shall constitute the approval of the holders of the Income Bonds for the purposes of this paragraph.

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also provides that the board of directors may give options to such officers or executives of the reorganized company to purchase any or all of such shares. Such a provision for issuance of additional shares of stock to officers or executives of the reorganized company is not approved.

Holders of capital stock shall not have any preemptive right to subscribe to any additional issues of stock of any class or of securities convertible into stock of any class or of warrants or options for the purchase of securities or stock of any class.

D. Execution of plan.

1. Payment or assumption of certain claims.

Of necessity, the following claims to the extent allowed, should be paid in cash in due course: (a) Claims arising from the administration of the trust estate and operation of the property subsequent to the filing of the petition in this proceeding under section 77 of the Bankruptcy Act, as amended, (b) claims against the debtor entitled to priority over one or more of the mortgages of the debtor, (c) claims for taxes and special assessments, and (d) claims for interest and principal not paid at maturity because not presented for payment. The plan should also contain a provision for payment in cash of the obligations of the receivers incurred between the time of appointment of the receivers on August 31, 1931, and the institution of the section-77 proceeding and reasonable administrative expenses and allowances in that proceeding, to the extent that provision shall be made therefor by the court in the present proceeding.

To the extent that all such claims are not paid by the debtor or the trustee of the estate of the debtor pursuant to order of the court in the reorganization proceeding, they should be assumed by the reorganized company and paid in cash in due course, provided that any amount so assumed should constitute a charge upon the reorganized company

prior in lien to all new securities issued under the new first mortgage and new general mortgage. All such claims, liabilities, and obligations may be adjusted or compromised and dealt with or paid or discharged by the reorganized company, all as may be determined by the board of directors of the reorganized company subject to approval by the court. We find that the interests of the holders of such claims will not be materially and adversely affected by the plan herein recommended.

The committee plan contains a provision that the reorganized company should be deemed to have assumed all labor claims against the receivers or trustees of the debtor's estate, subject to all defenses which would be available to the receivers or trustees of the debtor's estate, and all labor claims against the debtor arising prior to the institution of the receivership proceeding if such claims are entitled to priority over one or more of the mortgages of the debtor, subject to all defenses which would be available to the debtor. We will include in the provisions of the plan approved herein with respect to the treatment to be accorded all claims, whether entitled to priority or not, specific reference to labor claims. In view of this there is no reason for inclusion of the entire provision referred to and it will be omitted from our approved plan.

For continuity of operations, the reorganized company should be deemed to have assumed such of the contracts of the debtor which are executory in whole or in part, including any executory leases and liabilities under guaranties, as shall have been affirmed by the bankruptcy trustees in the reorganization proceeding with the approval of the court prior to the date of confirmation of the plan, and also any executory contracts made by the trustees of the estate of the debtor with the approval of the court in the reorganization proceeding which, by their terms, do not terminate at the conclusion of the reorganization proceeding. Such contracts not disaffirmed should be dealt with in the same

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manner. We find that these claims will not be materially or adversely affected by the plan.

Contracts with the trustees of the estate of the debtor, or the debtor, subject to cancelation, not otherwise provided for in the plan, should be assumed by the reorganized company so far as may be necessary or desirable as determined by the reorganization managers. We find that such contracts will not be materially and adversely affected by the plan.

2. Miscellaneous provisions.

(a) Transfer of property.

The plan should contain a provision that all property of the debtor should be retained by it or conveyed to a new company as may be determined by the reorganization managers with the approval of the court. As herein used, the term "reorganized company" means the debtor as reorganized or the new company thus acquiring the debtor's property.

(b) Reorganization managers.

There should be three reorganization managers, one to be designated by the institutional group, one by the 5-percent committee, and one by the court. The reorganization managers should carry out the plan under the supervision and control of the court.

If either the institutional group or the 5-percent committee should fail to designate its respective reorganization manager within such time as the court shall consider reasonable, the court should appoint either or both such members.

The reorganization managers should have, subject to any requirements of law and the requisite approval of the court and the Commission, full and plenary discretionary power to take all such action and enter into such arrangements, financial and other, as they may deem necessary or advisable, in order to consummate and carry into execution

the plan or any modification thereof; to fix the compensation of persons whose services they may employ in the execution of their powers; to incorporate the reorganized company if deemed necessary and desirable to form a new company; to supervise the transfer of property to the reorganized company and to make agreements and commitments for its account subject to its confirmation; to provide the method of participation in the plan; to determine the form and provisions not herein otherwise specifically provided of all instruments deemed by the reorganization managers to be necessary or proper; and to do all other acts in their discretion advisable for carrying out the plan.

The plan should provide, however, that the court shall, before they are put into use, approve the articles of incorporation, amendments to the articles of incorporation, by-laws, mortgages, trust agreements, bonds, securities, and stock certificates.

The reorganization managers should act by a majority at a meeting or in writing without a meeting. They should be authorized to employ such agents, attorneys, and others as they deem desirable for the purposes of the plan. The reorganization managers should be permitted from time to time to delegate to others any power or discretion conferred upon them by the plan, and they should not be liable for any action taken by them in good faith or by any person employed by them in good faith, except for their respective individual malfeasance or willful neglect.

The reorganization managers should not be authorized to solicit deposits of securities for purposes other than exchange or to solicit authorizations to represent security holders, except upon approval by the Commission of the terms of such solicitation, pursuant to section 77(p) of the Bankruptcy Act.

(c) Notice, confirmation of the plan, sale, etc.

The plan should contain provisions (1) as to the manner in which any notice required or permitted to be given under

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or pursuant to the plan shall be given, (2) as to the sale of all, or any part, of the debtor's property at public auction for the purpose of executing the plan, (3) as to cancelation of the present mortgages of the debtor upon consummation of a plan and the delivery to the reorganized company by the trustees under the mortgages of all property secured thereby free from the liens of the mortgages, (4) as to the constitution of the reorganized company's board of directors, the division of the board of directors into classes, and the staggering of the election of directors,[14] (5) as to the power of the court in construing the plan and in curing defects, supplying omissions, or reconciling inconsistencies therein, (6) as to the payment of taxes due the United States from the debtor or trustees for any taxable period prior to the confirmation of the plan, (7) as to the assumption of contracts with the trustees and debtor not otherwise provided for in the plan, and (8) as to the payment of the expenses of reorganization. The provisions of the committee plan with respect to such purposes as are covered therein appear reasonable and should be adopted for the approved plan substantially without change, except that the provisions in respect to payment of the expenses of reorganization are too broad. In lieu of such provisions, the plan should provide that all costs of administration of the trustees and all expenses of reorganization, including the amounts of all claims for compensation and expenses

[14] The provisions of the committee plan with respect to the board of directors of the reorganized company are as follows:

> The Board of Directors of the New Company shall consist of not less than eleven nor more than seventeen members who shall consist initially of such persons as may be designated by the Reorganization Managers with the approval of the Court.
>
> The Directors shall be divided into three classes whose terms of office shall respectively expire at different times. Each class shall consist as nearly as is practicable of one-third of the whole number of the Board of Directors. The first class shall consist of Directors whose terms of office shall expire in the year following the year in which the Plan is consummated; the second class shall consist of Directors whose term of office shall expire in the second year following the year in which the Plan is consummated; and the third class shall consist of Directors whose terms of office shall expire in the third year, following the year in which the Plan is consummated.

allowed pursuant to section 77 of the Bankruptcy Act, shall be paid in cash.

The authorization and approval granted by us in the plan should be upon the condition that the journal entries covering the necessary accounting adjustments required in execution of the plan should be submitted to the Commission for approval before they are recorded on the books of the reorganized company under the plan of reorganization herein recommended.

3. Further authorization by the Commission.

In view of the provision of section 77(f), we should, when a plan is finally adopted, give consideration to the granting of authorization for the issue of such securities, and for such sale of the properties, as may be required and proper for the execution of the plan. Nothing contained in this report approving a plan of reorganization should be considered or be construed as a grant of authority for the issue of new securities, assumption of obligations, transfer of any property, sale, consolidation or merger, or pooling of traffic, pursuant to either the Bankruptcy Act or the Interstate Commerce Act, until further appropriate action by the Commission upon confirmation of a plan by the court.

E. Conclusions as to plan.

We find that the plan approved herein meets the requirements of subsection (b) of section 77 of the Bankruptcy Act, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, will conform to the requirements of the law of the land regarding participation of the various classes of creditors and stockholders, and will otherwise meet the

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requirements of subsection (e) of section 77, and will be compatible with the public interest.

An appropriate order will be entered.

MILLER, Commissioner, dissenting in part:

In my opinion, the capitalization of the new company should be substantially that proposed by the 5-percent committee and the sinking fund payments should be set up in terms of a percentage of earnings and applied entirely to the first mortgage bonds until they are retired.

For reasons stated in my dissenting-in-part expression in *Chicago, R. I. & P. Ry. Co. Reorganization,* 242 I. C. C. 298, 471, insofar as they are appropriate here, I disagree with certain other findings approved by the majority.

eport of April 6, 1942.

Finance Docket N

PENDIX

Reorganization—Distribution of New Securities

Cash Payments	First-Mortgage 3¾-4% Series A bonds	General-Mortgage Income series A 4½% bonds	Shares, no-par common stock	To
	$	$		$
(obligations to be assumed by the reorganized company)				1,99
(interest on old bonds to be paid to date of consummation of plan)	12,000,000			12,00
none	none	4,500,000	450,000	23,00
1				
none	none	none	none	
none	none	none	none	
150,000[2]				
	12,000,000	4,500,000	450,000	37,00

Fixed requirements	Contingent requirements
$ 57,260	
450,000(b)	
	$200,000(c)
	60,000(d)
507,260	260,000
	202,500
	22,500(e)
507,260	485,000
507,260	485,000

ember 31, 1941.

d $30,000 if income available $1,250,000 per annum for any tion of the plan.

t of total railway operating

years after consummation of

l mortgage bonds outstanding.

Characteristics of New Securities Issued in Reorganization—Approved Plan

	First-mtge. Bonds	Income Bonds	Co
Amount	$12,000,000(a)	$4,500,000	450,0 (No-p
Issuable in series	Yes	Yes	
Dated	Consummation of plan	Jan. 1, 1942	
Maturity	40 years	75 years	
Interest	3¾%(b)	4½%	
Interest payable	Semi-annually	Annually	
Redeemable	105(c)	No premium	
Sinking fund	½ of 1%(d)	½ of 1%	
Security	General	General	
Issue of add'l. series	Yes	Yes	
Conversion	No	No	

(a) Total bonds authorized to be issued under the mo $18,000,000 outstanding at any time, $12,000,000 to in the reorganization and $6,000,000 reserved f issuance.

(b) Annual rate of interest will be increased to 4 perc come available for fixed charges equals or exceeds per annum for any 2 consecutive years after cons of plan.

(c) Premium to decrease by 1 percent for each 10-year maturity of bonds.

(d) Not to be effective until 10 years after consummatio

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ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 4, held at its office in Washington, D. C., on the 6th day of April, A. D. 1942.

FINANCE DOCKET NO. 13170

FLORIDA EAST COAST RAILWAY COMPANY REORGANIZATION

Investigation of the matters and things involved in this proceeding having been made, a hearing having been held, and said division having, on the date hereof, made and filed its report containing its findings of fact, its conclusions thereon, and a full statement of the reasons for its conclusions, which report is hereby referred to and made a part hereof:

IT IS ORDERED, That the following plan of reorganization of the Florida East Coast Railway Company, debtor, be and it is hereby, approved:

Effective date

The effective date of the plan shall be January 1, 1942. The effective date shall determine the extent to which the claims of present creditors shall be capitalized in new securities, but the plan shall not affect any of the creditors' claims until it is confirmed, and the carrying out of the plan shall not require any retroactive change in the operations of the trustees in bankruptcy, or in their accounts, or in the reports made to this Commission, or in any other reports or returns for the period prior to the date when such new securities are issued. All of the new securities, other than the first-mortgage bonds, shall be dated January 1, 1942. The first-mortgage bonds shall be dated as of, and shall bear interest from, the first day of the month in which the plan is consummated.

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Reorganized company

Except as otherwise provided herein, all property and franchises of the debtor shall be retained or conveyed to it or to a new company, as may be determined by the reorganization managers, with the approval of the court. As herein used, the term "reorganized company" means the debtor as reorganized or the new company thus acquiring the debtor's property, and the term "court", unless otherwise indicated, means the District Court of the United States for the Southern District of Florida.

New capitalization

The capitalization of the reorganized company, upon consummation of the plan as of its effective date, shall consist of approximately the following, the amounts stated being subject to variation to the extent, if any, that any equipment obligations are paid or reduced, or additional equipment obligations are incurred, and as may be necessary, if so determined by the reorganization managers, to avoid the issue of scrip in denominations not expressible in even dollars or even hundredths of a share:

Issue	Amount
Equipment-trust 3-percent certificates, series I	$ 992,000
Equipment-trust 2¾-percent certificates, series J	1,000,000
First-mortgage 3¾(4)-percent bonds, series A, due 40 years after date of issue	12,000,000
General mortgage 4½-percent bonds, series A, due December 31, 2017	4,500,000
Common stock (no par value) 450,000 shares	18,508,000
Total	$37,000,000

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Upon consummation of the plan and the issue and distribution of new securities, as herein provided, the existing mortgage bonds, shall be surrendered to the reorganization managers and canceled, and the respective mortgages shall be released of record and canceled.

Undisturbed securities.

The reorganized company shall assume all outstanding equipment obligations of the debtor and of the debtor's trustees' except in those cases where the contracts or agreements under which such obligations were issued have been disaffirmed by the former receivers of the debtor or the trustees of its estate. The interests of the holders of claims evidenced by all other such equipment obligations are found not to be materially and adversely affected by the plan.

First-mortgage Bonds.

The new first mortgage shall constitute a direct first lien, subject only to liens upon equipment, on all the properties and assets of every kind owned by the reorganized company upon the consummation of the plan, including without limitation, securities, equipment and the equity in such equipment as is subject to equipment obligations, and on all property and assets thereafter acquired, including securities in other companies except as hereinafter provided; provided, however, that

(1) If the reorganized company shall acquire substantially all the properties of any other company constituting a Class I carrier as defined by the rules then in force of the Commission or other public regulatory body having jurisdiction at the time, such properties shall not be subject to the lien of the first mortgage unless acquired in whole or in part (a) by the use of first-mortgage bonds or their proceeds, or (b) by moneys deposited under the first mortage;

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(2) If the reorganized company shall be consolidated with, or shall be merged into, or shall sell its assets substantially as an entirety to, any other company which at the time is a Class I carrier as defined by the rules then in force of the Commission or other public regulatory body having jurisdiction at the time, no properties theretofore owned or thereafter acquired by such other company shall be subject to the lien of the first mortgage except properties thereafter acquired which shall be appurtenant or incident to properties subject to the lien of the first mortgage, or which shall be within the maintenance or replacement covenants of the first mortgage, or which shall be acquired in whole or in part (a) by the use of first mortgage bonds or their proceeds or (b) by moneys deposited under the first mortgage; and

(3) If the reorganized company shall acquire additional presently existing railroad properties, or if it shall acquire securities representing 50 percent or more of the voting power in any company owning such railroad properties, of such a nature and in such a manner as to comply with each and all of the following provisions:

(a) no first-mortgage bonds or their proceeds or moneys deposited under the first mortgage shall be used for the acquisition thereof;

(b) one-half or more of the consideration paid therefor shall consist of general mortgage bonds or their proceeds or moneys deposited under the general mortgage;

(c) such railroad properties shall constitute a line of railroad 50 miles or more in length; and

(d) such railroad properties shall not constitute a replacement or relocation of any railroad proper-

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ties then subject to the lien of the first mortgage and shall not consist of mileage paralleling, between two or more local points, mileage subject to the lien of the first mortgage;

then such properties or such securities shall be subject to the direct first lien of the general mortgage subject only to liens existing thereon at the time of such acquisition.

Bonds outstanding at any one time under the first mortgage shall be limited to $18,000,000 aggregate principal amount, except as this limit may be raised with the consent of the holders of not less than 66⅔ percent in aggregate principal amount of first mortgage bonds then outstanding in the manner hereinafter provided.

The authorized but unissued balance of first-mortgage bonds may be issued from time to time in different series. Series other than series A shall be subject to such limitations and restrictions as may be specified in the first mortgage, shall be payable on such date or dates, shall be issued in such denominations, shall bear interest at such rates, and shall contain such provisions in regard to redemption, conversion, taxes, place or places and money or moneys of payment, registration and sinking funds and shall have such other characteristics as may be prescribed by the board of directors of the reorganized company at the time of issue, but all first-mortgage bonds shall be equally secured by the lien of the first mortgage.

First-mortgage series A bonds in the principal amount of $12,000,000 shall be authenticated and delivered in the reorganization in exchange for the present first-mortgage 4½ percent bonds in equal aggregate principal amounts. The series-A bonds shall mature 40 years after date and shall bear interest at the rate of 3¾ percent per annum payable semiannually. This rate shall be increased to 4 percent per annum, for all income periods following any two con-

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secutive calendar years after consummation of the plan, in which income available for fixed charges of the reorganized company as reported to the Commission amounts to $1,250,000 or more per annum.

The bonds of series A shall be redeemable in whole or in part at any time on 30 days' notice at their principal amount and accrued interest plus a premium on such principal amount as follows: 5 percent for the first ten years, decreasing thereafter 1 percent for each ten-year period, except that during the last ten-year period the premium shall be 1 percent for the first seven years thereof and nothing for the last three years thereof.

The first mortgage shall provide that on May 1 of the tenth calendar year following the issue of series-A bonds, and on May 1 of each year thereafter, so long as any series-A bonds are outstanding, the reorganized company shall pay to the trustee under the mortgage as an installment on a sinking fund, a sum equal to one-half of one percent of the maximum principal amount of series-A bonds, at any time previously authenticated and delivered under the first mortgage, if sufficient available net income for the previous year is available for such purpose after the deductions made pursuant to paragraph (1) of the subdivision herein provided and entitled "Determination and application of available net income". Such payments shall be cumulative only to the extent earned and unpaid. Such sinking fund shall be applied to the retirement of the first-mortgage bonds, series A, by purchase in the open market or by call for tender, or redemption at not exceeding the principal amount thereof and interest payable upon redemption as hereinbefore provided; all first-mortgage bonds, series A, so acquired shall be canceled and no bonds may be issued under the first mortgage to refund any such first-mortgage bonds, series A.

In case of any unification of the properties of the reorganized company with the properties of any other company, involving a combination of earnings and elimination of separate accounts, income available for fixed charges for the

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purpose of this paragraph may be determined in such manner as may be agreed upon by the consolidated company and approved by holders of first-mortgage bonds, as follows: (a) upon the vote or written consent of the holders of 75 percent of the principal amount of first-mortgage bonds outstanding at the time, or (b) if a meeting shall be held upon at least three weeks' notice and if at such meeting the holders of less than 75 percent of the principal amount of first-mortgage bonds outstanding at the time shall be present in person or by proxy, and if at such adjourned meeting there shall again be less than the holders of 75 percent of the principal amount of first-mortgage bonds present in person or by proxy, and if such meeting shall again be adjourned for at least three weeks, then at such second adjournment the vote of 75 percent of the principal amount of the first-mortgage bonds present in person or by proxy at the meeting shall constitute the approval of the holders of the first-mortgage bonds for the purposes of this paragraph.

Within the limits hereinbefore set forth, additional first-mortgage bonds of series A or of one or more other series may be issued under the first mortgage ranking *pari passu* as to lien with the $12,000,000 principal amount of first-mortgage bonds, series A, to be authenticated and delivered in the reorganization. Such bonds in a principal amount not exceeding $500,000 may be authenticated and delivered at any time or from time to time on the order of the company and may be used for any proper corporate purpose. Bonds so authenticated and delivered are herein called "free bonds". Such bonds may also be issued from time to time by the reorganized company to reimburse it for expenditures made after December 31, 1941 for the following purposes: The improvement, construction, completion or acquisition by the reorganized company of any property except equipment; or of any part of or interest or right in any property, except equipment; provided that the same shall be used or useful upon or in connection with the rail-

roads of the reorganized company or the operation or conduct thereof, shall be or become subject to the first lien of the first mortgage and the title thereto shall be vested in the reorganized company. Bonds may also be issued against deposited cash which may be paid out to reimburse the reorganized company for expenditures made after December 31, 1941 for the purposes set forth in the foregoing sentence. Bonds may be issued and deposited cash paid out for such purposes, only to the extent that the principal amount of all bonds (other than free bonds) issued for such purposes plus the amount of deposited cash paid for such purposes, shall not in the aggregate exceed 75 percent of the increase since December 31, 1941, in the reorganized company's investment in road, not charged to the capital fund, which investment shall be considered to be the investment made and charged to road accounts, less any accrued depreciation on the company's books with respect thereto.

Bonds may also be issued for the purchase, payment, redemption or refunding of any bonds secured by the first-mortgage, except that bonds other than emergency bonds retired through the operation of any capital fund or any sinking fund which may be constituted for any series of first-mortgage bonds shall not be reissued and no other first-mortgage bonds shall be issued in lieu thereof.

No bonds issued under the first mortgage shall be pledged if as a result of such pledge the aggregate principal amount of all first-mortgage bonds then under pledge, in excess of the principal amount of all loans so secured, will exceed 10 percent of the aggregate principal amount of all first mortgage bonds then authenticated and uncanceled.

The first mortgage shall also contain a provision for the right to authenticate and deliver "emergency bonds" free from the restrictions hereinbefore set forth provided that their authentication and delivery is authorized by a resolution of two-thirds of the board of directors to the effect that funds are needed and cannot be obtained except by the sale, exchange or pledge of the bonds applied for. Any such

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emergency bonds not retired within two years from the date of authentication and delivery shall be retired by means of an annual sinking fund equal to 5 percent of the amount of such bonds issued and the principal amount of such emergency bonds outstanding shall not exceed at any one time either $1,000,000 or two years' fixed charges of the reorganized company, as that term is used in this Commission's uniform system of accounts, for steam railroads, whichever sum shall be the greater. If and when emergency bonds so authenticated and delivered are retired, they shall be returned by the reorganized company to the trustee under the first mortgage and canceled. After such cancelation, but not before, the bonds so canceled shall be deemed never to have been authenticated and delivered for the purpose of determining the right of the reorganized company to the authentication and delivery of emergency bonds or other bonds or withdrawal of deposited cash under the provisions of the first mortgage.

Additional limitations or restrictions on the issuance of first-mortgage bonds may be made by supplemental indenture.

The first mortgage shall contain provisions giving to the holders of 66⅔ percent in aggregate principal amount of outstanding bonds to be affected by the business to be submitted to the meeting, the power by resolution at a bondholders' meeting to take the various actions therein specified including the power to make any modification in or addition to the provisions of the first mortgage, or the rights and obligations of the reorganized company or the rights of the holders of the bonds of all or any series, provided that the bondholders shall have no power to (a) extend the maturity of any bonds, or reduce the rate of interest thereon, or otherwise modify the terms of payment of principal (other than a modification of the provisions of any sinking fund or redemption provisions of bonds) or interest, without the consent of the holder of each bond so affected, or (b) effect a reduction of the percentage required for any

action authorized to be taken by the bondholders, provided that application of the provisions of this paragraph shall be conditioned upon approval by this Commission of any proposed change of the sinking fund provisions, or any other provision, of the first mortgage, incorporated therein pursuant to the requirements of this plan. In case any series of bonds is affected differently from any other series by the action proposed, the vote of holders of 66⅔ percent in aggregate principal amount of each such series so differently affected shall also be required. Provision shall be made whereby bondholders may vote at such meeting by proxy.

General-mortgage bonds.

The general mortgage shall constitute a lien, subject to the lien of the first mortgage so far as it attaches, and any prior liens, upon all property of the reorganized company owned upon consummation of the plan and thereafter acquired, and a first lien on other property to the extent permitted by the terms of the first mortgage.

The general-mortgage bonds, other than as to those to be issued in the reorganization, shall be unlimited as to aggregate principal amount, shall be issuable from time to time in different series, subject to such limitations and restrictions as may be specified in the general mortgage, shall be payable on such date or dates, have such denominations, bear interest at such rates and contain such provisions as to accumulation of interest, redemption, conversion, taxes, place or places and money or moneys of payment, registration, and sinking funds, and have such other characteristics, as may be prescribed by the board of directors of the reorganized company at the time of issue, but all general-mortgage bonds shall be equally secured by the lien of the general mortgage. Bonds of any series issued under the general mortgage (except the series to be authenticated in reorganization) shall bear fixed or contingent interest as may be determined by the board of directors of the reor-

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ganized company. The general mortgage shall provide that bonds issued in the future in addition to the general-mortgage bonds to be issued in the reorganization, shall be issuable from time to time to refund outstanding first-mortgage bonds or general-mortgage bonds for the purposes and subject to the same restrictions applying to the issue of additional first-mortgage bonds as stated in the next preceding section (first-mortgage bonds) of this order, to the extent that first-mortgage bonds are not issued for such purposes.

The general-mortgage bonds to be issued in reorganization shall consist of $4,500,000 principal amount, of income bonds, series A (hereinafter referred to as income bonds), which shall be authenticated and delivered ratably to holders of the now outstanding first and refunding mortgage 5-percent bonds. The income bonds shall be dated January 1, 1942, mature 75 years after date, bear interest at the rate of 4½-percent per annum, due and payable as hereinafter provided, and shall be redeemable in whole or in part at the option of the reorganized company or for the sinking fund (hereinafter described) on May 1 in any year on 30 days' notice at their principal amount plus (a) full interest for the last preceding year and all unpaid accumulated interest (as defined) for prior years and (b) interest at the rate of 4½ percent per annum from the last preceding December 31 to the redemption date.

Interest on the income bonds at the rate of 4½ percent per annum shall (up to the limits of accumulation hereinafter prescribed) become absolutely due as a debt on December 31 in each year but shall be payable on May 1 of the next succeeding year or thereafter as provided below. Such interest shall be mandatorily payable (except as hereinafter provided) only out of available net income of the reorganized company that remains after making deduction for the capital funds as hereinafter provided in the subdivision entitled "Determination and application of available net income" and any sinking fund for first-mortgage bonds

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which may be deductible before such interest. Unpaid interest shall accumulate up to the maximum amount of 13½ percent, but no more. If such maximun accumulation is reached, no further accumulations shall be made unless the amount of accumulated interest is later reduced, in which case unpaid interest accruing after such reduction in accumulated interest may again be accumulated from time to time, but the total accumulation shall never exceed a maximum of 13½ percent. Accumulated interest shall be mandatorily payable on May 1 of any subsequent year (a) whenever and to the extent that there is available net income for the preceding calendar year remaining after the deductions made pursuant to paragraphs (1), (2) and (3) of "Determination and application of available net income" or (b) in any event (whether earned or not) at the maturity or on redemption of the income bonds. For the purposes of the three preceding sentences, payment of interest shall be considered as applied to interest accrued for the last preceding calendar year before being applied to accumulations. The board of directors of the reorganized company at any time in its discretion may pay out of any funds lawfully available therefor, any interest due or accrued on the income bonds, even if not earned.

No interest shall be paid on income bonds in any year if the amount would be less than one-fourth of 1 percent, and all payments shall be in multiples of one-fourth of 1 percent. Any excess available for interest but not paid because of the foregoing provision, shall be reserved and added to the income applicable to interest on the income bonds for succeeding calendar year or years. If there are outstanding general-mortgage bonds of different series bearing contingent interest, the amount applicable to interest on such bonds shall be distributed among the respective series in proportion to the unpaid interest at the time accumulated on the bonds of such series, respectively.

The general mortgage shall provide for a sinking fund for income bonds, the annual payments to be made on May

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1, beginning May 1, 1942, and to be equal to one-half of 1 percent of the largest principal amount of income bonds at any time previously authenticated and delivered, if sufficient available net income for the previous year is available for such purpose after the deductions made pursuant to paragraphs (1), (2), (3), and (4) of the subdivision entitled "Determinations and application of available net income". Such sinking funds shall be applied to the retirement of the income bonds by purchase in the open market or by call for tender or redemption at not exceeding the principal amount thereof and interest payable upon redemption as hereinbefore provided; all income bonds so acquired shall be canceled and no bonds may be issued under the general mortgage to refund any such income bonds.

The general mortgage shall contain provisions giving to the holders of 66⅔ percent in aggregate principal amount of outstanding bonds to be affected by the business to be submitted to a bondholders' meeting, the power by resolution at such meeting to take the various actions therein specified including the power to make any modification in or addition to the provisions of the general mortgage, or the rights and obligations of the reorganized company as set forth therein or the rights of the holders of the bonds of all or any series provided that the bondholders shall have no power to (a) extend the maturity of any bonds, or otherwise modify the terms of payment of principal (other than a modification of the provisions of any sinking fund) or modify the terms of payment of accumulated interest, without the consent of the holders of each bond so affected, or (b) effect a reduction of the percentage required for any action authorized to be taken by the bondholders, provided that application of the provisions of this paragraph shall be conditioned upon approval by this Commission of any proposed change of the sinking-fund provisions, or any other provision, of the first mortgage, incorporated therein pursuant to the provisions of this plan. In case any series of bonds is affected differently from any other series by

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the action proposed, the vote of holders of 66⅔ percent in aggregate principal amount of each such series so differently affected shall also be required. Provision shall be made whereby bondholders may vote at such meeting by proxy.

Determination and application of available net income.

Available net income shall be determined for each calendar year, on or before May 1 of the following year, beginning with the calendar year 1942, and continuing thereafter so long as any income bonds remain outstanding. When no income bonds remain outstanding, the provisions of this subdivision shall cease to be operative.

Available net income for each such calendar year shall be determined by deducting all fixed charges of the reorganized company, accrued during such calendar year from the reorganized company's income available for fixed charges for such calendar year (determined in accordance with the accounting rules of this Commission or other authority having jurisdiction in the premises at the time, or to the extent not governed by such accounting rules, in accordance with sound accounting practice); provided, however, that available net income for any period after December 31, 1941, until the reorganized company comes into ownership and possession of the properties now operated by the trustees shall be computed as if the reorganized company had come into such ownership and possession on January 1, 1942 and had issued the new securities issuable under the plan as of that date, except that fixed interest up to the last day of the month preceding consummation of the plan shall be deducted for the period at the rate of 4½ percent on the old first-mortgage bonds instead of at the reduced rate provided for in the plan on the new first-mortgage bonds.

Available net income shall be determined for each such calendar year, as the accounts shall be stated on the books

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of the reorganized company when its accounts are closed for such calendar year, without adjustments, except that: (1) if in respect of any calendar year the available net income is a deficit, the amount of such deficit may, in the discretion of the board of directors of the reorganized company, be carried forward and be deducted in determining available net income for the succeeding calendar year or calendar years until such deficit (or accumulated or remaining deficits) be extinguished by earnings which, in the absence of such deficit or deficits, would be available net income; and (2) any adjustments necessary to correct the income accounts of any prior year shall be made by the appropriate entries which may either be made in the accounts of the current year or, in the discretion of the board of directors of the railroad company, and subject to the approval of this Commission or of such other governmental agency, if any, as at the time may have jurisdiction over the accounting practice of the railroad company, may be made, in whole or in part, in the accounts of any subsequent year or years, and any such debits or credits made in the accounts of any year to adjust entries in the income accounts of prior years shall be treated as income items for the year in which entered on the books, whether cleared through income or profit and loss accounts.

Available net income for each calendar year shall be applied to the following purposes and in the following order:

(1) Available net income for each calendar year for the first 10 years after the effective date of the plan shall, to the extent of 2 percent of total railway operating revenues for such year and to the extent of 1 per cent for each year thereafter, be applied to the creation of a capital fund. After the first 10 years after the effective date of the plan the payments into the capital fund each year may be increased over the amount mandatorily prescribed herein by such additional amount up to a total of 2 percent of total

railway operating revenues for such year as the board of directors of the reorganized company may determine.

The appropriation for the capital fund shall be reduced by the amount of any charges for depreciation of roadway and structures made in such calendar year to the extent that such charges exceed the amount which would have been charged to operating expenses in connection with the property for which depreciation is so charged for such calendar year under the present accounting rules of this Commission, and may, in the discretion of the board of directors of the reorganized company be increased by the amount, if any, by which available net income for the last preceding calendar year shall have been less than the maximum amount permitted for the capital fund for such year, but no deficiency shall be made up for more than one preceding calendar year. Moneys in the capital fund may be applied to, or used to provide for, or to reimburse the treasury of the reorganized company for, capital investments as defined by this Commission's classification of Income, Profit and Loss and General Balance Sheet Accounts, for Steam Roads, Account No. 701 Investment in Road and Equipment, or such substituted account as may at the time be in effect to the extent that such capital investments have been made or contracted for during such calendar year or within three months thereafter, but including therein improvements to equipment, payments made upon new equipment, or initial and principal payments upon equipment leased under equipment trusts or purchased under conditional sale agreements, only to the extent that such payments during such calendar year shall in the aggregate exceed depreciation of equipment charged against income for such calendar year, provided, however, that

(a) the capital fund may be applied only to such part of the cost of capital investments as hereinabove defined as remains after deducting therefrom all retirements of roadway and structures charged to operating expenses in such calendar year;

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(b) to the extent that expenditures are so provided for or reimbursed out of the capital fund, the reorganized company shall not thereafter have the right to issue any bonds or other evidences of indebtedness or withdraw deposited cash, to capitalize or reimburse such expenditures, provided, however, that such expenditures (if for purposes for which first-mortgage bonds or general-mortgage bonds may be issued) may, within such limits, if any, as may be specified in the first mortgage or the general mortgage be used to supply, in whole or in part, the excess of capital expenditures required to be certified under either such mortgage over the principal amount of the bonds that may be issued or the amount of deposited cash that may be withdrawn under the terms thereof; and

(c) any amount which is available for the capital fund under the foregoing provisions may be used, in addition to the uses hereinbefore allowed, to retire first-mortgage bonds, to pay any debt at the maturity thereof, or to pay fixed charges to the extent not earned, but any amount so available which is not expended, or appropriated to meet liabilities incurred before the end of the year in respect of which it shall have been set aside or within three months thereafter, may be accumulated up to $300,000, but any amount in excess of such accumulation shall not be carried forward. If any sums set aside in the capital fund are used to pay any fixed charges, no contingent charges and no dividends should be paid until the capital fund has been reimbursed for the funds so used.

(2) Any then remaining available net income for any calendar year shall, to the extent required, be applied to the payment of any sinking fund established for emergency bonds.

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(3) Any then remaining available net income for any calendar year shall, to the extent required, be applied to the payment of the sinking fund herein provided for the first mortgage, series A, bonds and shall be applied to payment of any sinking fund provided for any other issues of first mortgage bonds.

(4) Any then remaining available net income for any calendar year shall be applied to the payment on the next succeeding May 1, of interest on the outstanding income bonds accrued during the last preceding calendar year, and of any accumulated unpaid interest thereon.

(5) Any then remaining available net income for any calendar year shall, to the extent required, be applied to the payment on the next succeeding May 1 of any sinking fund provided for general mortgage bonds including the sinking fund provided for the income bonds.

(6) Any then remaining available net income for any calendar year may be applied to any proper corporate purpose of the reorganized company, including dividends on the capital stock of the reorganized company.

Dividends may be paid on stock of any class out of the income of any calendar year prior to the close of such calendar year, if, but only if, prior to the declaration of such dividends the board of directors of the reorganized company shall have determined that the available net income for such year applicable for the purposes specified in the foregoing paragraphs (2), (3), (4) and (5) will be more than sufficient to pay the amounts payable out of such available net income pursuant to said paragraphs and such amount shall have been deposited in trust for the purposes specified in said paragraphs.

In case of any unification of the properties of the reorganized company with the properties of any other company as a result of which it becomes desirable to combine the

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earnings of such properties and eliminate separate accounts, income available for fixed charges for the purpose of computing available net income applicable to interest or sinking fund for the income bonds for any succeeding fiscal year may be determined in any manner approved by holders of income bonds as follows: (a) upon the vote or written consent of the holders of 75 percent of the principal amount of income bonds outstanding at the time, or (b) if a meeting shall be held upon at least 3 weeks' notice and if at such meeting the holders of less than 75 percent of the principal amount of income bonds outstanding at the time shall be present in person or by proxy, and if such meeting shall be adjourned for at least three weeks, and if at such adjourned meeting there shall again be less than the holders of 75 percent of the principal amount of income bonds present in person or by proxy, and if such meeting shall again be adjourned for at least 3 weeks, then at such second adjournment the vote of 75 percent of the principal amount of the income bonds present in person or by proxy at the meeting shall constitute the approval of the holders of the income bonds for the purposes of this paragraph.

Capital stock.

There shall be authorized and issued 450,000 shares of capital stock of the reorganized company without par value which shall be issued in the reorganization pro rata to the holders of the first and refunding mortgage bonds. Holders of such capital stock shall be entitled to one vote per share on all matters. The charter or certificate of incorporation of the reorganized company shall provide for cumulative voting for directors. Holders of such capital stock shall not have any preemptive right to subscribe to any additional issues of stock of any class or of securities convertible into stock of any class or of warrants or options for the purchase of securities or stock of any class.

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Treatment of existing securities and claims.

Holders of bonds outstanding shall receive, (a) in respect of the principal amount thereof in the case of the first-mortgage 4½-percent bonds, due June 1, 1959, and (b) in respect of the principal amount thereof and accrued interest thereon to December 31, 1941 in the case of the first and refunding mortgage 5-percent bonds, due September 1, 1974, new securities issuable under the plan at the following rates for each $1,000 principal amount of first-mortgage 4½-percent bonds, and for each $1,000 principal amount of first and refunding mortgage 5-percent bonds and accrued interest thereon to December 31, 1941:

	First mortgage bonds series-A	General mortgage bonds income series-A	Capital stock (without par value) (shares)
First mortgage 4½ per cent bonds....	$1,000		
First and refunding mortgage 5 per-cent bonds, series A.....	—	$100	10

Accrued interest shall, subject to the approval of the court, be paid on the old first-mortgage 4½-percent bonds of the debtor at the rate of 4½ percent per annum to and including the last day of the month preceding the consummation of the plan, assuming no unreasonable delay in consummation of the plan and no materially adverse change in cash position of the debtor.

The claim, if any, as finally determined, of the trustee for equipment-trust certificates, series D, against the trustees shall be paid in cash or assumed by the reorganized company upon such terms as the board of directors of the reorganized company may determine subject to the approval of the court.

The interests or equities of (1) holders of present unsecured claims against the debtor, and (2) holders of the capital stock of the debtor have no value and nothing shall be distributable to them.

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Claims not affected by plan.

The following claims to the extent allowed are not affected by the plan: (a) claims arising from the administration of the trust estate and operation of the property subsequent to the filing of the petition under section 77 of the Bankruptcy Act, as amended, on January 25, 1941; (b) obligations of the receivers incurred in the receivership proceeding between the time of appointment of the receivers on August 31, 1931 and the filing on January 25, 1941 of the petition under section 77 of the Bankruptcy Act, as amended, and reasonable administrative expenses, and allowances in that proceeding, to the extent that provision shall be made therefor by the court in the present proceedings; (c) claims entitled to priority over one or more of the mortgages of the debtor, including labor claims entitled to such priority; (d) claims for taxes and special assessments; (e) claims for interest and principal not paid at maturity because not presented for payment. To the extent that such claims, liabilities, or obligations are not paid by the debtor or the trustees of the estate of the debtor pursuant to order of the court in the reorganization proceeding, they should be assumed by the reorganized company and paid in cash in due course, provided that any amounts, of the foregoing classes (a) to (e), inclusive, assumed by the reorganized company shall constitute a charge upon the reorganized company prior in lien to all new securities issued under the new first mortgage and new general mortgage. All such claims, liabilities, and obligations may be adjusted or compromised and dealt with or paid or discharged by the reorganized company, all as may be determined by the board of directors of the reorganized company subject to approval by the court. In view of the above provisions, the interests of the holders of such claims of the foregoing classes (a) to (e) inclusive, against the debtor will not be materially and adversely affected by the plan.

Expenses of reorganization.

All costs of administration of the trustees and all expenses of reorganization, including the amounts of all claims for compensation and expenses allowed pursuant to section 77 of the Bankruptcy Act, shall be paid in cash.

Assumption of disaffirmance of leases or contracts.

The reorganized company shall be deemed to have assumed such of the contracts of the debtor which are executory in whole or in part, including any executory leases and liabilities under guaranties, as shall have been affirmed by the trustees of the estate of the debtor in the reorganization proceeding with the approval of the court, and also any executory contracts made by the trustees of the estate of the debtor with the approval of the court in the reorganization proceeding which, by their terms, do not terminate at the conclusion of the reorganization proceeding. The interests of the holders of such claims will not be materially and adversely affected by the plan.

CARRYING OUT THE PLAN.

Reorganization managers.

The reorganization managers shall be three in number, and shall carry out the plan under the supervision and control of the court. One shall be designated by the group of insurance companies described in the report and referred to therein as the "institutional group", one by the deposit committee for the debtor's first and refunding mortgage bonds, and one by the court. They shall have general supervision of the carrying out of the plan.

If any party or parties entitled to do so shall fail to designate a reorganization manager within such time as the court shall consider reasonable, the court shall appoint such manager.

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The reorganization managers shall have, subject to any requirements of law and requisite approval of the court and this Commission, full and plenary discretionary power to take all such action and to enter into such arrangements, financial and otherwise, as they may deem necessary or advisable, in order to consummate and carry into execution the plan or any modification thereof; to fix the compensation of persons whose services they may employ in the execution of their powers; to incorporate the reorganized company (if they decide to form a new corporation); to supervise the transfer of any properties to the reorganized company and to make agreements and commitments for its account, subject to its confirmation; to provide the method by which creditors and other interested parties may participate in the plan; to determine the form and provisions, so far as not otherwise herein specifically provided, of the certificate of incorporation of the reorganized company, if a new corporation is to be formed, and its by-laws, or to effect the necessary amendments to the certificate of incorporation of the existing Florida East Coast Railway Company and its by-laws, the new bonds and the mortgages under which the same shall be issued, the stock certificates and any other instruments deemed by the reorganization managers to be necessary or proper in connection with the plan; and to do all other acts in their discretion advisable for carrying out the plan.

The court shall, however, before they are put in use, approve the articles of incorporation, amendments to articles of incorporation, by-laws, mortgages, trust agreements, bonds, securities, and stock certificates.

The reorganization managers may act by a majority as from time to time constituted, at a meeting or in writing without a meeting. They may employ such agents, attorneys, and others as they may deem desirable for the purposes of the plan. The reorganization managers may from time to time delegate to others any power or discretion

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conferred upon them by the plan; and the managers shall not be liable for any action taken or omitted by them in good faith or by any person employed by them in good faith, except for their respective individual malfeasance or willful neglect.

The reorganization managers shall not be authorized to solicit deposits of securities for purposes other than exchange or to solicit authorizations to represent security holders, except upon approval by this Commission of the terms of such solicitation, pursuant to section 77(p) of the Bankruptcy Act.

Acceptance of the plan, participation therein and execution thereof.

Acceptance of the plan shall include acceptance of the new bonds, mortgages, stock certificates, and all instruments necessary and appropriate to the carrying out of the plan, other than the orders of the court and this Commission, to the same effect as though the terms of such instruments were set out in full herein.

The method by which creditors and other parties in interest may, after confirmation of the plan by the court, participate therein shall be determined by the reorganization managers and notice thereof duly given.

If so ordered by the court, the plan, after finding by the court that it is fair and equitable, may be executed by a sale at public auction, at not less than a fair upset price as determined by the court, of all or any part of the properties and assets of the debtor, free from all liens or claims, other than those herein expressly stated not to be affected by the plan. Upon any such sale, the properties and assets offered for sale may be purchased for the benefit of the reorganized company by the reorganization managers, or by a purchaser nominated by the reorganization managers, and in that event there shall be applied on account of the purchase price the distributive share, if any, of the pro-

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ceeds of such sale of all securities the holders of which shall have assented to the plan, and the securities, though not assenting to the plan, of all classes which shall be bound by the plan in accordance with the provisions of section 77 of the Bankruptcy Act, as amended. The reorganization managers or their representative may bid, at any such sale, such amounts as the reorganization managers may determine.

All properties and assets so sold which are purchased by the reorganization managers or their representative shall be transferred to the reorganized company.

In the event of any such sale, the reorganization managers may in their discretion sell all or any portion of the new securities distributable under the plan in respect of the securities of any creditor, if neither such creditor nor the class to which such creditor belongs shall be bound by the plan in accordance with the provisions of section 77 of the Bankruptcy Act, as amended. The reorganization managers may in their discretion allot to nonassenting creditors of any class which shall not have accepted the plan, upon the request of such creditors, the securities allocated to them under the plan, in lieu of their aliquot share of the proceeds of the sale of the properties. The proceeds of any such sale of securities, and with the approval of the court, any other funds which, in the judgment of the reorganization managers, are available among the assets of the debtor estate or of the reorganized company, may be used to pay the portion of the purchase price of property acquired payable in cash on any such sale.

Upon any such sale, nonassenting creditors of any class which shall not be bound by the plan in accordance with the provisions of section 77 of the Bankruptcy Act, as amended, and/or the stockholders shall be entitled to receive, in lieu of the securities, if any, otherwise issuable under the plan, their equitable proportion of the proceeds of such sale, after deducting therefrom all expenses of such

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sale and the amount which would be required to pay in full, of principal and unpaid interest accrued to the date of such sale, all creditors whose claims equitably marshaled are prior in lien or superior in equity to the claims of such nonassenting creditors or the rights of such stockholders.

In the event of any such sale, the plan shall not otherwise be carried out unless the reorganization managers or their representative shall be the successful bidder for substantially all of the properties and assets offered for sale.

Board of directors.

The board of directors of the reorganized company shall consist of not less than 11 nor more than 17 members who shall consist initially of such persons as may be designated by the reorganization managers with the approval of the court.

If permitted by law the by-laws of the reorganized company may provide that the board of directors shall be divided into three approximately equal classes whose terms of office shall respectively expire at different times. The first class shall consist of directors whose term of office shall expire in the year following the year in which the plan is consummated. The second class shall consist of directors whose term of office shall expire in the second year following the year in which the plan is consummated; and the third class shall consist of directors whose term of office shall expire in the third year following the year in which the plan is consummated.

Notice and construction of plan.

Unless otherwise provided in section 77 of the Bankruptcy Act, as amended, or any order or orders of the court in the reorganization proceeding or of the Commission, whenever notice shall be required or permitted to be given under or pursuant to the plan, such notice shall be given by publishing a copy thereof once in each week for two

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successive weeks in one newspaper published and of general circulation in the Borough of Manhattan, City and State of New York, and in one newspaper published and of general circulation in the City of Jacksonville, State of Florida, and in one newspaper published and of general circulation in the City of Miami, State of Florida, and also (1) in case of notice to security holders who have accepted the plan, by mailing such notice, postage prepaid, to the addresses of such security holders set forth in the acceptances signed by them, and (2) in case of notices to security holders who shall not have accepted the plan, by mailing such notice, postage prepaid, to such security holders whose names and addresses are available, but failure to mail any such notices, or delay in mailing any such notices, shall not invalidate the notice by publication above provided, which alone shall be sufficient.

The construction of the plan by the court shall be final and conclusive. The court shall have the power to cure any defect, supply any omission, or reconcile any inconsistency, in such manner or to such extent as may be necessary or expedient in order to carry out the plan effectively.

Taxes due the United States.

The debtor, as reorganized, or the transferee of the property, will assume the liability for, and will pay in full in due course any and all taxes due to the United States from the debtor or the trustees for any taxable period prior to the date of confirmation of a plan of reorganization, without requiring proof thereof in this proceeding and without prejudice by reason of not having been proved herein, subject, however, to the statutes of limitation normally applicable to the assessment and collection of such taxes, provided, however, that the liability of the reorganized company for any taxes which are the subject of litigation on the date of the confirmation of the plan of reorganization, or which may become the subject of litigation on

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any date thereafter and prior to the expiration of the applicable statute of limitation, shall be determined pursuant to law, and provided, further, however, that this provision shall not be deemed to preclude either the debtor, the trustees, or the reorganized company from contesting the merits of any such tax in the manner provided by law.

IT IS FURTHER ORDERED, That the authorization and approval herein granted by this Commission are upon the condition that the journal entries covering the necessary accounting adjustments under the order will be submitted to this Commission for approval before they are recorded on the books of the reorganized company under the plan of reorganization herein approved.

IT IS FURTHER ORDERED, That nothing herein contained shall be, or be construed as, a grant of authority for the issue of any securities, assumption of obligations, transfer of any property, sale, consolidation, or merger of the debtor's properties, or pooling of traffic, pursuant to either the Bankruptcy Act or the Interstate Commerce Act, until further action by this Commission upon confirmation of the plan by the court.

By the Commission, division 4.

W. P. BARTEL,
Secretary.

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Report and Order of the Interstate Commerce Commission Filed and Entered August 10, 1942.

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET NO. 13170

FLORIDA EAST COAST RAILWAY COMPANY REORGANIZATION

Submitted June 15, 1942. Decided August 10, 1942

Upon petitions, plan of reorganization of the Florida East Coast Railway Company approved April 6, 1942, pursuant to section 77 of the Bankruptcy Act, as amended, modified. Prior report, 252 I. C. C. 423.

Additional appearances, PAUL B. BARRINGER, JR., and B. HOLLY ROSE, JR.

SUPPLEMENTAL REPORT OF THE COMMISSION

By the Commission:

Within the statutory period of 60 days from the date of the report and order of this Commission, division 4, of April 6, 1942, 252 I. C. C. 423, approving a plan of reorganization for the Florida East Coast Railway Company, debtor, pursuant to section 77 of the Bankruptcy Act, 11 U. S. C. 205, hereinafter referred to as the approved plan, petitions for its modification were filed by (1) the deposit committee for first and refunding mortgage 5-percent bonds of the debtor, hereinafter referred to as the 5-percent committee, (2) Guaranty Trust Company of New York, trustee under the first mortgage of the debtor, and (3) the trustees of the estate of Alfred I. duPont, deceased. A reply to the petition of the 5-percent committee was filed by Guaranty Trust Company of New York, trustee under the debtor's first

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mortgage, and a reply brief was filed by the 5-percent committee to the petitions of the Guaranty Trust Company, trustee under the debtor's first mortgage, and to the petition of the trustees of the duPont estate.

By the terms of section 77 (d) of the act, we may, after rendering a report and order in which we have approved a plan of reorganization, upon petition for good cause shown filed within 60 days of the date of our order, and upon further hearing if we shall deem necessary, in a supplemental report and order, modify any plan which we have approved, stating the reasons for such modification. After considering the several petitions and replies to the petitions, hereinafter discussed, we do not deem further hearings necessary on the matters presented, and we are of the view that the required consideration may be given to the proposed modifications of the approved plan without further hearings.

Petition of the 5-percent committee.—The 5-percent committee requests that the approved plan be modified by increasing the permissible capitalization of the reorganized company from approximately $37,000,000 to about $58,000,000 and by increasing the principal amount of new general-mortgage income bonds to be issued in the reorganization from $4,500,000 to $18,000,000. The committee contends that the higher capitalization requested is justified by the debtor's earnings of $1,602,000 available for payment of interest in 1941 and by the estimate by the trustees of earnings of $2,835,000 in 1942, as well as by the valuation figures of our Bureau of Valuation, which have been included in the record of the proceeding. The committee states that the 1942 earnings may be about $400,000 less than estimated in the event present through freight traffic from and to Cuba is terminated as a result of the war.

The committee urges that, unless the capitalization is materially increased, the security holders will be subjected to undue hardship by reason of additional Federal income and excess-profits taxes to which the earnings of the reorganized company otherwise will be subjected, particularly

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if the present tax laws are amended in the manner currently reported in newspapers. The committee points out that, if the rates under a new excess-profits tax law are increased to 94 percent, a proposal reported to be a subject of discussion by the Ways and Means Committee of the United States House of Representatives, such taxes for 1942, upon the basis of the earnings estimated by the trustees of the debtor, will amount to $616,875, which will be in addition to 580,500 normal taxes and surtaxes, or a total of $1,197,375. Under the capitalization in the approved plan, about $1,815,000 of earnings would be free from the excess-profits tax.

The increase in the amount of new general-mortgage bonds issuable in the reorganization is requested for the same reasons. If this increase is approved, the committee requests that interest on the new general-mortgage bonds be made wholly noncumulative, that there be a provision for an extension of the maturity date of the bonds upon the consent of two-thirds of the holders of the bonds affected, and that the annual rate of payments into the sinking fund for retirement of these bonds be decreased from one-half to one-fourth of 1 percent of the principal amount of the bonds outstanding.

In reply to these requests by the 5-percent committee for modifications of the approved plan, Guaranty Trust Company of New York, trustee under the debtor's first mortgage, urges that the increases in capitalization and in the amount of general-mortgage bonds are not justified. The first-mortgage trustee contends that the debtor's 1942 earnings are admittedly abnormal because of war conditions, that the 1941 earnings were probably abnormal, that the new tax provisions referred to by the 5-percent committee have not yet been enacted, that computations based on them are purely speculative, that it is unsound to base a plan of reorganization on abnormal earnings for 2 years, and that, in any event, on the committee's own computations, no excess-profits tax will be owing in any year unless earnings

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exceed $1,815,000, which sum is greater than the earnings in any recent year, although it may be exceeded in 1942.

In the report of April 6, 1942, division 4 recognized the fact that 1941 earnings were influenced by the extraordinary conditions existing as the result of the war and, in the report, stated fully all considerations leading to its conclusions as to justifiable amounts of capitalization and of new general-mortgage bonds. Under present conditions, the fact that the year 1942 gives promise of producing even larger earnings than 1941 affords too uncertain and precarious a basis to justify the increases sought. The findings in the report of April 6, 1942, as to the amounts of capitalization of the reorganized company and of new general-mortgage bonds to be issued in the reorganization are affirmed.

It is provided in the approved plan that:

> The effective date of the plan shall be January 1, 1942.
>
> The effective date shall determine the extent to which the claims of present creditors shall be capitalized in new securities, but the plan shall not affect any of the creditors' claims until it is confirmed, and the carrying out of the plan shall not require any retroactive change in the operations of the trustees in bankruptcy, or in their accounts, or in the reports made to this Commission, or in any other reports or returns for the period prior to the date when such new securities are issued. All of the new securities, other than the first-mortgage bonds, shall be dated January 1, 1942. The first-mortgage bonds shall be dated as of, and shall bear interest from, the first day of the month in which the plan is consummated.

The 5-percent committee requests that, in lieu of the foregoing provisions, the following be substituted:

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The reorganization managers shall, with the approval of the Court, fix, in the light of the time when the reorganization securities will be available for delivery, the date as of which claims shall be capitalized in new securities, such date to be not earlier than January 1, 1943. All of the new securities, other than the first-mortgage bonds, shall be dated as of the date so fixed. The first-mortgage bonds shall be dated as of, and shall bear interest from, the first day of the month in which the plan is consummated.

The committee states that the trustees of the estate of the debtor had $4,442,168 of cash on hand as of May 29, 1942, that the committee has petitioned the court to authorize the trustees to pay interest on the first and refunding bonds of the debtor in the amount of one semiannual coupon, viz, $1,125,000, and that the matter of such payment was assigned by the court for hearing on June 11, 1942. The committee urges that, since this coupon and others of the first and refunding bonds may be paid prior to the date of consummation of the plan as provided in the approved plan, it is desirable that the new general-mortgage income bonds be dated as closely as possible to the date of consummation of the plan in order that interest will not accrue upon them for periods for which interest might be authorized to be paid upon the first and refunding bonds now outstanding.

In view of the present cash position of the trustees of the debtor and the possibility of current payments of interest coupons on the first and refunding bonds, and in order that nothing shall be done during the pendency of the reorganization proceeding to prejudice in any way the debtor's tax position until the plan shall be consummated, we approve the requested provisions with respect to a postponement of the effective date of the plan, modified, however, so as to provide that the effective date shall be not later than January 1, 1944, in order that consummation of the plan shall not be unduly delayed.

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Since the plan may be consummated on some date other than the first day of January of any year, it should provide for the method of determination and application of available net income for any fraction of a calendar year remaining after the date of consummation of the plan and the following January 1. The change in the effective date of the plan also will require certain amendments in respect of the dates of issue and maturity of the new general-mortgage income bonds and in the provisions with respect to the treatment of existing securities and claims.

The 5-percent committee further requests that an ambiguity in the report and order of April 6, 1942, be removed in respect of the price at which the new series A first-mortgage bonds may be redeemed for the purpose of retirement under the sinking fund provided for such bonds. In that part of the report in which this sinking fund is described, it is stated that bonds shall be purchased for the sinking fund in the open market or obtained by call for tender at not exceeding the current redemption price plus accrued interest, or by redemption. In the order, it is provided that the bonds shall be redeemable in whole or in part on 30 days' notice at their principal amount and accrued interest, plus certain premiums, as therein specified, which apply to redemption in all years except the last 3 years of the life of the bonds. It is provided in the order, in connection with the application of the sinking fund to retirement of series A bonds, that the bonds shall be purchased "in the open market or by call for tender, or redemption at not exceeding the principal amount thereof and interest payable at redemption, as hereinabove provided."

These various provisions appear to be in conflict with respect to the price at which the bonds shall be obtained for the purposes of the sinking fund. Our intention is that the provision be consistent in this respect with the provisions of the plans filed. Thus the price should be not more than the face value of the bonds plus accrued interest, and our plan will be modified to give clear expression to this purpose.

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The Committee also requests that the approved plan be modified by changing a provision in the new first mortgage whereby additional first-mortgage bonds may be issued against property additions to the extent of 75 percent of the increase in the reorganized company's investment in road account so as to provide that, in determining such increase in investment account, there shall be no deduction of credits to investment account for branch-line abandonment, and by permitting the addition of such an appropriate alternative provision as the reorganization managers may agree upon, with the approval of the court, as will carry out the same intent, in the event the reorganized company shall change its accounting from a retirement to a depreciation basis.

The petitioner points out that there is a real possibility that the Okeechobee branch north of Okeechobee may be abandoned in the near future and, if it is abandoned while the reorganized company is maintaining its books of account upon a retirement basis, a credit to road account of over $1,900,000 would result. If this credit were deducted from charges to road account for investment actually made subsequent to December 31, 1942, before permitting the issuance of additional first-mortgage bonds, the result probably would be that no additional bonds could be issued for a number of years. The 5-percent committee contends that, since the possibility of the abandonment of part of the Okeechobee branch is recognized at this time, and since the part to be abandoned is not considered of material significance as security for the new first mortgage, such a credit should not be required to be deducted from additions to road account in determining the excess which may be funded by the issue of new bonds.

Guaranty Trust Company of New York, as trustee under the debtor's first mortgage, in replying to this request of the 5-percent committee, states that it has no objection to the modification, provided that the branch lines to be excepted from the credits to investment account for branch-

line abandonment be confined wholly to the Okeechobee branch north of Okeechobee.

In our opinion, an abandonment of the part of the Okeechobee branch referred to above will result in such a large credit to investment account, while the books of the reorganized company are maintained on a retirement basis, that the relief requested is justified. The plan should also include the provision requested by the committee, which is referred to above, to provide for the event that the reorganized company shall change its accounting from a retirement to a depreciation basis, except that the provision should be subject to our approval. The approved plan will be so modified, confining the retirements which will be excepted to those in respect of that part of the Okeechobee branch extending north of Okeechobee.

The committee requests a clarification of one of the provisions of the approved plan to express plainly an intent that additional emergency first-mortgage bonds may be issued in lieu of emergency bonds retired. It is our intention that retirement of the emergency bonds shall be subject to the provisions of the special sinking fund provided for them in the event that they are not otherwise retired within 2 years from the date of their authentication and delivery, but that they shall constitute a revolving fund, and that other emergency bonds may be issued in lieu of those retired within the limitations provided in the plan.

However, the provisions in the approved plan with respect to the new first mortgage include the following:

> Bonds may also be issued for the purchase, payment, redemption or refunding of any bonds secured by the first mortgage, except that bonds retired through the operation of any capital fund or any sinking fund which may be constituted for any series of first mortgage bonds shall not be refundable by the issuance of other first-mortgage bonds.

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Since this provision may be construed as affecting emergency bonds as well as other first-mortgage bonds, it will be amended to read as follows:

> Bonds may also be issued for the purchase, payment, redemption, or refunding of any bonds secured by the first mortgage, except that bonds, other than emergency bonds the issuance of which is hereinafter provided for, retired through the operation of any capital fund or any sinking fund which may be constituted for any series of first-mortgage bonds shall not be reissued and no other first mortgage bonds shall be issued in lieu thereof.

The committee further requests that the approved plan be modified by limiting the provision that the capital fund may be used, among other purposes, to pay fixed charges and that, when so used, no contingent charges and no dividends shall be paid until the capital fund has been reimbursed therefor, so as to permit the capital fund to be used, insofar as it may be applied to payment of fixed charges, only to pay fixed charges to the extend not earned. Otherwise, the committee urges, it might be possible for the reorganized company to use capital-fund moneys for the payment of fixed charges through a number of years, even though such charges had been earned, thus diverting moneys otherwise available for other purposes and building up a considerable deficit in years of sparse earnings which would have to be made good in subsequent years before payment of contingent charges.

This limitation upon the use of the capital fund appears to be prudent and justified and is in conformity with provisions of other plans of reorganization which we have approved, and the plan will be so modified.

The committee requests that the approved plan be modified so as to give the reorganized company authority to require that any sinking fund which may be established for

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future issues of first-mortgage bonds shall rank *pari passu* with the sinking fund provided by the approved plan for series A bonds which are to be issued in the reorganization. Under the terms of the approved plan, available net income is to be applied to the sinking fund for series A bonds before it shall be applied to any sinking fund which may be provided for future issues of first-mortgage bonds. The committee fears that this precedence may cause subsequent issues of first-mortgage bonds to have a market value somewhat less than the series A bonds and thereby impair the value of the new first mortgage as a sound financing medium in the future. We concur in this view, and, particularly because of the small amount of series A bonds to be issued and the modest sinking fund provided for them, are of the opinion that all such general sinking funds provided for first-mortgage bonds should rank equally. The approved plan will be so modified.

Under the terms of the approved plan, the directors of the reorganized company will be classified so that the term of office of approximately one-third of the entire board of directors will expire each year. This provision of the plan is conditioned by the phrase "if permitted by law." The 5-percent committee points out that the statutes of the State of Florida provide as to the election of directors of railroad corporations:

> The directors shall be chosen annually by the stockholders at the time fixed in the charter; they shall be stockholders qualified to vote at the election at which they are chosen.

The committee considers, in light of this provision that the conditioning of the provision of the approved plan with the phrase " if permitted by law," may raise doubt as to our intention that the directors should be so classified irrespective of the provisions of the statute of the State of Florida above quoted, despite the following provisions of section 77 (f) of the Bankruptcy Act, as amended:

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> Upon confirmation of the plan, the debtor and any other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and the control of the judge, the laws of any State or the decision or order of any State authority to the contrary notwithstanding.

The committee requests that we delete the condition expressed by the words "if permitted by law" from the beginning of the paragraph of the approved plan dealing with the classification of directors of the reorganized company. The trustees of the duPont estate by their petition, object, among other things, to any classification of the directors. Our disposition of this request of the 5-percent committee will be included in our discussion of the duPont estate trustees' petition.

A final request by the 5-percent committee is that the approved plan be modified by adding a provision giving the reorganization managers authority to make such amendments of, and additions to, the provisions of the new mortgages, upon approval by the court, as may prove necessary or desirable, in the event that depreciation accounting is adopted by the reorganized company in lieu of the present retirement accounting, to preserve the same general intent and spirit of the provisions of the capital fund which define the extent to which it shall be applied in respect of capital investments. The committee also points out that there may be other provisions of the approved plan requiring such amendments or additions and that the modification should be broad enough to cover them.

By our order of June 8, 1942, in The Matter of Modifying the Classification of Operating Revenues and Operating Expenses for Steam Roads, certain amendments to the Special Instructions for Operating Expenses in the Class-

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ifying of Operating Revenues and Operating Expenses were ordered which will require changes in carriers' accounts with respect to depreciation accounting, effective January 1, 1943. These changes may alter considerably the effect of that provision of the approved plan which is as follows—

> (a) The capital fund may be applied only to such part of the cost of capital investments as hereinbefore defined as remains after deducting therefrom all retirements of roadway and structures charged to operating expenses in such calendar year.

There may be provisions of the plan in respect of the terms of the new mortgages, which also may be materially affected by the prospective change in accounting. In our opinion, the modification requested by the committee is a practicable means of meeting this contingency and, upon condition that any such additions to and alterations of the terms of the new mortgages shall be subject to our approval, is approved.

Petition of Guaranty Trust Company of New York, as trustee under the debtor's first mortgage.—Guaranty Trust Company of New York, first-mortgage trustee, requests that we modify the approved plan by increasing the annual interest rate of the new series A first-mortgage bonds to 4½ percent, which is the rate borne by the present first-mortgage bonds. This modification and certain others requested by this petitioner are directed to an effort to improve the treatment under the approved plan of the present first-mortgage bondholders, who, under the plan, will receive all the new first-mortgage bonds issuable upon reorganization. To a certain extent, at least, the benefit sought for the present first-mortgage bondholders would be realized at the expense of the first and refunding mortgage bondholders.

As pointed out in the report of April 6, 1942, the approved plan is the result of a carefully considered compromise of the conflicting lien claims of the holders of the two

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issues of mortgage bonds, has been agreed to by representatives of important groups of such creditors, although not by this petitioner, and was found in the report to be fair and equitable and to meet the requirements of section 77. The petitioner urges that the prospective ample coverage of interest on the new first-mortgage bonds as found in the report of April 6, 1942, eliminates any basis for a finding that the interest rate on the new first-mortgage bonds should be less than that of the present ones.

Answering this contention, the 5-percent committee points out that, if the lien dispute between the respective mortgage holders, admittedly a close question, were litigated and resolved in favor of the junior issue, instead of a compromise being accepted by both sides to the controversy, the first and refunding bondholders would be entitled to have either the amount of the new first-mortgage bonds allotted to the present first-mortgage bondholders reduced or the new issue of first-mortgage bonds substantially increased. The compromise arrived at slightly decreases the interest charge upon the new first-mortgage bonds, thus releasing more income applicable to the new junior securities receivable by the present first and refunding bondholders.

All of these claims and the sacrifices to be made by both classes of creditors were carefully considered when the plan was approved, and we see no reason to change the conclusions which were reached, the reasons therefor being fully stated in the report of April 6, 1942. This requested modification is denied.

The first-mortgage trustee further requests that payments into the general sinking fund provided by the plan for the series A first-mortgage bonds commence immediately upon their issuance and that such payments be supplemented by the amount of interest reduction resulting from retirement of first-mortgage bonds through operation of the sinking fund.

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The petitioner also requests that the sinking fund established in the approved plan for emergency bonds be also applied to the "free bonds," the issue of which, if necessary, is permitted in the plan, and that the annual payments into the sinking fund be increased from 5 percent of the amount of the emergency bonds to an amount equivalent to 50 percent of net income of the reorganized company remaining after payment of fixed charges, capital-fund requirements, and all other outstanding sinking funds on first-mortgage bonds, except an "excess bond sinking fund," which is also requested and which is hereinafter described. All of these requests are opposed by the 5-percent committee.

The requested provision regarding the excess bond sinking fund would provide that, whenever the aggregate principal amount of first-mortgage bonds outstanding, plus all other funded debt bearing fixed interest, shall exceed either (*a*) 50 percent of the total capitalization of the reorganized company or (*b*) 55 percent of such total capitalization less the principal amount of funded debt bearing contingent interest at that time outstanding, the reorganized company shall set aside as an excess bond sinking fund 50 percent of net income after payment of fixed charges, capital-fund requirements, and all other outstanding sinking funds except the sinking fund provided for emergency and free bonds, and should apply this first to retirement of any outstanding first-mortgage bonds other than emergency bonds and free bonds. The petitioner further urges that, for the purpose of computing the amount of annual payments into the excess bond sinking fund, emergency bonds and free bonds should not be included as "first-mortgage bonds outstanding" or in the computation of funded debt.

The issues of series A first-mortgage bonds and emergency and free bonds provided for in the plan are small and well secured, and we agree with the conclusion in the report that the general sinking fund and special emergency-bond sinking fund therein provided for their retirement are sufficient. The acceleration in payment of the new first-mort-

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gage bonds requested by this petitioner would affect adversely the treatment accorded the present first and refunding mortgage bondholders and would violate the terms of the compromise approved in the plan. These requested modifications are denied.

The first-mortgage trustee urges that no "free bonds" should be permitted to be issued, since they were designed primarily to provide the reorganized company with cash to meet expenses incident to or connected with reorganization or other corporate expenses which may be incurred shortly thereafter and that the present cash position of the trustees of the debtor renders such a source of cash unnecessary. The 5-percent committee denies that the issue of free bonds was designed particularly for these purposes but rather was to meet any possible pressing obligations of the reorganized company. The committee contends that, because of unforeseen contingencies which may arise in the future, authorization of the issuance of such free bonds should not be eliminated from the plan.

In our opinion, there is no present need for issuing any free bonds, but it cannot therefore be assumed that, in the next 40 years, covering the life of the first mortgage, the cash position of the reorganized company will always be as favorable. For this reason, and in view of the fact that the issue is limited to $500,000, principal amount, this request of the first-mortgage trustee is denied.

The petitioner requests that the plan be modified so that a vote of 80 percent, instead of 66⅔ percent, of holders of first-mortgage bonds shall be required to authorize modifications of, or additions to, the first mortgage, and that, if any such modification or addition involves subordination of the first-mortgage lien to a prior lien, it may be effected only in the event of a default. In our opinion, contingencies now unknown and unpredictable may arise in the future making some change in the terms of the mortgage advisable or even necessary to avoid serious embarrassment in the operation or financing of the reorganized company. The property of

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the debtor is relatively small and peculiarly sensitive to changing conditions by reason of its location and the nature of its traffic.

We believe that a provision for possible modification of the terms of its mortgages is a precautionary measure which is properly included in the approved plan and that, to render it effective, the percentage of bondholders required to effect any change in the mortgages should not be increased to a point which is impracticable of attainment. As pointed out by the 5-percent committee, the percentage of bondholders required to make any change effective is 66⅔ percent of the amount of outstanding bonds affected by the change and not of the amount of bondholders present and voting upon the change. We believe that this is a reasonable and practicable percentage, and it is affirmed. With respect to the request that a default be required before changes of the nature stated above can be effected, it is likely that such changes will only be sought if necessary to prevent a default. The conclusions of the report of April 6, 1942, in respect of these provisions of the approved plan are affirmed, and the request of the first-mortgage trustee is denied.

The final request of the first-mortgage trustee is for the inclusion in the approved plan of (1) a provision in the first mortgage that no first-mortgage bonds shall be authenticated to capitalize additions and betterments to the mortgaged estate if such additions and betterments were made more than 3 years prior to the date of authentication of such bonds, and (2) a provision that no more than $1,000,000 of first-mortgage bonds shall be authenticated and held in the treasury of the reorganized company without a binding contract forthwith to sell or pledge them. We do not consider these provisions necessary in the present case in view of the limitation of the total issue of first-mortgage bonds to $18,000,000 and the other restrictions upon the future issue of bonds included in the new first mortgage. Because of these restrictions, there would seem to be small likelihood of bonds being issued in the future on the basis of

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additions and betterments which are more than 3 years old or until the additional financing is required. This request for modification of the plan is denied.

The position of the trustees of the estate of Alfred I. duPont.—The trustees of the duPont estate filed an exception to the approved plan and brief thereon. While this document contains no petition for relief, it may be fairly assumed, we believe, that a modification of the plan is requested so that the directors of the reorganized company shall not be classified, or, if classified, that the first board shall not be appointed by the reorganization managers as constituted under the terms of the approved plan.

The duPont trustees refer to the statute of the State of Florida hereinabove quoted and contend that the terms of the approved plan whereby one reorganization manager is to be selected by the institutional group of present first-mortgage bondholders, one by the 5-percent committee for holders of first and refunding mortgage bonds, and one by the court, do not afford any representation to first and refunding bondholders who have not deposited their bonds with the committee and unfairly give the present first-mortgage bondholders a right to appoint one reorganization manager, although they will own no stock in the reorganized company. The duPont trustees evidently contemplate that the plan should be modified to require the first board of directors to be elected by vote of all of the new stockholders, or, at least, to be appointed by reorganization managers to be designated in such a manner that it will be assured that the institutional group will have no voice in the selection of the directors and that the 5-percent committee will have only such voice as is warranted by the amount of new stock its depositors will receive in the reorganization.

Answering these objections, the 5-percent committee points out that the institutional group has a real and substantial interest in the carrying-out of the plan and therefore is entitled to have a voice in the designation of the

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reorganization managers, that the reorganization manager to be appointed by the court will adequately represent the interests of nondepositing present first and refunding mortgage bondholders, and that a classification of the new directorate is necessary to insure that at least two-thirds of the board will always consist of men with previous experience as directors of the reorganized company and prevent the sudden and complete changes in membership and policies which are possible when an entire new board of directors is elected.

The institutional group owns about 45 percent of the present first-mortgage bonds outstanding, and the 5-percent committee has on deposit about 35 percent of the present first and refunding mortgage bonds. These parties undertook the task of attempting to reach a compromise of the conflicting claims in the reorganization proceeding and, after prolonged negotiations, arrived at results which in the main were found by division 4 to be fair and equitable, a conclusion with which we agree.

The appointment by the court of one of the three reorganization managers should afford the nondepositing first and refunding mortgage bondholders the opportunity to make such representations regarding such appointment as they may desire. As a practical matter, they probably will not act as a unit. In our opinion, it is advisable that the reorganization managers should be so selected as to insure a stable, continuous policy of operation and management of the reorganized company, particularly in its early years. We believe that the provisions of the approved plan with respect to the reorganization managers and the first board of directors will produce that result. We affirm these provisions.

We have hereinbefore referred to the fact that the provision in the approved plan relative to the board of directors is conditioned by the phrase "if permitted by law." In view of the conclusion which we have reached with re-

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spect to the advisability of a classification of the board of directors of the reorganized company and in view of the provisions of section 77 (f) of the Bankruptcy Act, as amended, this phrase should be deleted to remove any ambiguity in the expression of our intention that the provisions as to the board of directors shall be effective notwithstanding the statute of the State of Florida which has been referred to. The plan will be so modified.

Other minor changes in the text of our order will be made to conform to our previous conclusions herein.

There is attached hereto an appendix showing, among other things, a revised statement of the characteristics of the new securities to be issued in the reorganization and their distribution under the plan.

General conclusions.—We conclude:

1. That, upon the petitions filed, the plan of reorganization approved by the report and order of division 4 in this proceeding on April 6, 1942, pursuant to section 77 of the Bankruptcy Act, as amended, should be modified as herein specified, and that, as thus modified, the plan will meet the requirements of section 77 (b) and (e) of the Bankruptcy Act, as amended, will be compatible with the public interest, and should be approved.

2. That, except as the plan shall be so modified, the petitions for its modification should be denied.

An appropriate supplemental order will be entered.

MILLER, *Commissioner,* dissenting in part:

I would grant the petition of the 5-percent committee with respect to capitalization. See my dissent in the former report of April 6, 1942, which is also applicable to this report.

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APPENDIX A

Florida East Coast Railway Company Reorganization—
Distribution of New Securities

Nature of claim	Class	Principal	Interest to Jan. 1, 1942	Total claims	Cash payments	First-mortgage 3¼-4-percent series A bonds	General-mortgage income series A 4½-percent bonds	No-par common stock	Total
								Shares	
ient trusts not disaffirmed..	II	$ 1,992,000	.....	$ 1,992,000	(1)	(1)	(1)	.....	$ 1,992,000
ortgage bonds	III	12,000,000	.....	12,000,000	(2)	$12,000,000	.....	.....	12,000,000
nd refunding mortgage.....	IV	45,000,000	$24,375,000	69,375,000	None	None	$4,500,000	450,000	23,008,000
claims[2]	I	$ 3,421,577	.....	$ 3,421,577	(3)	.....	.....	.....	(3)
creditors' claims.....	V				None	None	None	None	.....
stock	VI	37,500,000	.....	37,500,000	None	None	None	None	.....
ization expenses		4 150,000	.....	150,000	4 150,000	.....	.....	.....	(4)
Total		100,063,577	24,375,000	124,438,577	.....	12,000,000	4,500,000	450,000	37,000,000

bligations to be assumed by the reorganized company.

nterest on old bonds to be paid to date of consummation of plan.

mount of general claims filed, of which priority claims are a part as yet undetermined of $700,919 of the total claims. Labor claims in the of $200,000 have been settled for $17,000. Priority claims are to be paid in cash.

stimated by trustees, exclusive of compensation of counsel and other parties, to be paid in cash.

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Allocation of New Securities

	First-mortgage bonds	General-mortgage bonds	Common stock
			Shares
Per $1,000 first-mortgage bond.....	$1,000	.....	....
Per $1,000 first and refunding mortgage bond	.....	$100	10

Capitalization and Annual Requirements

	Capitalization	Fixed requirements	Contingent requirements
Equipment trusts	[1]$ 1,992,000	$ 57,260	.....
First-mortgage bonds	12,000,000	[2]450,000	.....
.....	.....	.....	[3]$200,000
.....	.....	.....	[4]60,000
Total fixed-interest debt	13,992,000	507,260	260,000
General-mortgage bonds	4,500,000	.....	202,500
.....	.....	.....	[5]22,500
Total debt	18,492,000	507,260	485,000
No-par stock	18,508,000	.....	.....
Total capitalization.....	37,000,000	507,260	485,000

[1] Estimated to be outstanding as of Dec. 31, 1941.

[2] Annual fixed interest will be increased $30,000 if income available for fixed charges equals or exceeds $1,250,000 per annum for any 2 full consecutive calendar years after consummation of the plan.

[3] Capital fund computed at 2 percent of total railway operating revenue of $10,000,000.

[4] Sinking fund not effective until after 10 income periods after consummation of the plan.

[5] Sinking fund of one-half of 1 percent of general-mortgage bonds outstanding.

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Characteristics of New Securities Issued in Reorganization—Approved Plan

	First-mortgage bonds	Income bonds	Common stock
Amount	[1]$12,000,000	$4,500,000	450,000 shares (no-par value)
Issuable in series	Yes	Yes	
Dated	Consummation of plan	Consummation of plan	
Maturity	40 years	75 years	
Interest	3¾ percent	4½ percent	
Interest payable	Semiannually	Annually	
Redeemable	[3]105	No premium	
Sinking fund	[4]One-half of 1 percent	One-half of 1 percent	
Security	General	General	
Issue of additional series	Yes	Yes	
Conversion	No	No	

[1] Total amount of bonds authorized to be issued under the mortgage is $18,000,000 outstanding at any time, $12,000,000 to be issued in the reorganization and $6,000,000 reserved for future issuance.

[2] Annual rate of interest will be increased to 4 percent if income available for fixed charges equals or exceeds $1,250,000 per annum for any 2 consecutive years after consummation of plan.

[3] Premium to decrease by 1 percent for each 10-year period to maturity of bonds.

[4] Not to be effective until 10 years after consummation of plan.

APPENDIX B

Supplemental Order Entered at a General Session of the Interstate Commerce Commission Held at Its Office in Washington, D. C., on the 10th Day of August, A. D. 1942

Investigation of the matters and things involved in this proceeding having been made upon petitions filed, and the Commission having, on the date hereof, made and filed a

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supplemental report containing its findings of fact, its conclusions thereon, and a full statement of the reasons for its conclusions, which report is hereby referred to and made a part hereof:

It is ordered, That the report and order of April 6, 1942, of division 4 of this Commission, approving a plan of reorganization of the Florida East Coast Railway Company, hereinafter called the debtor, be, and it is hereby, modified, and, as thus modified, the plan shall read as follows:

The reorganization managers shall fix, in the light of the time when the reorganization securities will be available for delivery, the date as of which claims shall be capitalized in new securities, such date to be not earlier than January 1, 1943, nor later than January 1, 1944. All of the new securities, other than the first-mortgage bonds, shall be dated as of, and shall bear interest from, the first day of the month in which the plan is consummated.

Reorganized company.—Except as otherwise provided herein, all property and franchises of the debtor shall be retained or conveyed to it or to a new company, as may be determined by the reorganization managers, with the approval of the court. As herein used, the term "reorganized company" means the debtor as reorganized or the new company thus acquiring the debtor's property, and the term "court," unless otherwise indicated, means the District Court of the United States for the Southern District of Florida.

New capitalization.—The capitalization of the reorganized company, upon consummation of the plan as of its effective date, shall consist of approximately the following, the amounts stated being subject to variation to the extent, if any, that any equipment obligations are paid or reduced, or additional equipment obligations are incurred, and as may be necessary, if so determined by the reorganization

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managers, to avoid the issue of scrip in denominations not expressible in even dollars or even hundredths of a share:

Issue	Amount
Equipment-trust 3-percent certificates, series I	$ 992,000
Equipment-trust 2¾-percent certificates, series J	1,000,000
First-mortgage 3¾(4)-percent bonds, series A, due 40 years after date of issue	12,000,000
General-mortgage 75-year 4½-percent bonds, series A	4,500,000
Common stock (no par value), 450,000 shares	18,508,000
Total	37,000,000

Upon consummation of the plan and the issue and distribution of new securities, as herein provided, the existing mortgage bonds shall be surrendered to the reorganization managers and canceled, and the respective mortgages shall be released of record and canceled.

Undisturbed securities.—The reorganized company shall assume all outstanding equipment obligations of the debtor and of the debtor's trustees except in those cases where the contracts or agreements under which such obligations were issued have been disaffirmed by the former receivers of the debtor or the trustees of its estate. The interests of the holders of claims evidenced by all other such equipment obligations are found not to be materially and adversely affected by the plan.

First-mortgage bonds.—The new first mortgage shall constitute a direct first lien, subject only to liens upon equipment, on all the properties and assets of every kind owned by the reorganized company upon the consummation of the plan, including without limitation, securities, equipment, and the equity in such equipment as is subject to equipment

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obligations, and on all property and assets thereafter acquired, including securities in other companies except as hereinafter provided; provided, however, that (1) if the reorganized company shall acquire substantially all the properties of any other company constituting a class I carrier as defined by the rules then in force of the Commission or other public regulatory body having jurisdiction at the time, such properties shall not be subject to the lien of the first mortgage unless acquired in whole or in part (*a*) by the use of first-mortgage bonds or their proceeds, or (*b*) by moneys deposited under the first mortgage; (2) if the reorganized company shall be consolidated with, or shall be merged into, or shall sell its assets substantially as an entirety to, any other company which at the time is a class I carrier as defined by the rules then in force of the Commission or other public regulatory body having jurisdiction at the time, no properties theretofore owned or thereafter acquired by such other company shall be subject to the lien of the first mortgage except properties thereafter acquired which shall be appurtenant or incident to properties subject to the lien of the first mortgage, or which shall be within the maintenance or replacement covenants of the first mortgage, or which shall be acquired in whole or in part (*a*) by the use of first-mortgage bonds or their proceeds, or (*b*) by moneys deposited under the first mortgage; and (3) if the reorganized company shall acquire additional railroad properties existing at present, or if it shall acquire securities representing 50 percent or more of the voting power in any company owning such railroad properties, of such a nature and in such a manner as to comply with each and all of the following provisions—(*a*) no first-mortgage bonds nor their proceeds, nor moneys deposited under the first mortgage, shall be used for the acquisition thereof, (*b*) one-half or more of the consideration paid therefor shall consist of general-mortgage bonds or their proceeds or moneys deposited under the general mortgage, (*c*) such railroad properties shall constitute a line of railroad 50 miles or more

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in length, and (*d*) such railroad properties shall not constitute a replacement or relocation of any railroad properties then subject to the lien of the first mortgage and shall not consist of mileage paralleling, between two or more local points, mileage subject to the lien of the first mortgage—then such properties or such securities shall be subject to the direct first lien of the general mortgage subject only to liens existing thereon at the time of such acquisition.

Bonds outstanding at any one time under the first mortgage shall be limited to $18,000,000 aggregate principal amount, except as this limit may be raised with the consent of the holders of not less than 66⅔ percent in aggregate principal amount of first-mortgage bonds then outstanding in the manner hereinafter provided.

The authorized but unissued balance of first-mortgage bonds may be issued from time to time in different series. Series other than series A shall be subject to such limitations and restrictions as may be specified in the first mortgage, shall be payable on such date or dates, shall be issued in such denominations, shall bear interest at such rates, shall contain such provisions in regard to redemption, conversion, taxes, place or places and money or moneys of payment, registration, and sinking funds, and shall have such other characteristics as may be prescribed by the board of directors of the reorganized company at the time of issue, but all first-mortgage bonds shall be equally secured by the lien of the first mortgage.

First-mortgage series A bonds in the principal amount of $12,000,000 shall be authenticated and delivered in the reorganization in exchange for the present first-mortgage 4½-percent bonds in equal aggregate principal amounts. The series A bonds shall mature 40 years after date and shall bear interest at the rate of 3¾ percent per annum payable semiannually. This rate shall be increased to 4 percent per annum for all income periods following any 2 consecutive full calendar years after consummation of the plan in which income available for fixed charges of the

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reorganized company as reported to the Commission amounts to $1,250,000 or more per annum.

The bonds of series A shall be redeemable, except bonds acquired through the sinking fund as hereinafter provided, in whole or in part at any time on 30 days' notice at their principal amount and accrued interest plus a premium on such principal amount as follows: 5 percent for the first 10 years, decreasing thereafter 1 percent for each 10-year period, except that during the last 10-year period the premium shall be 1 percent for the first 7 years thereof and nothing for the last 3 years thereof.

The first mortgage shall provide that, on May 1 of the twelfth income period as hereinafter defined, and on May 1 of each year thereafter, so long as any series A bonds are outstanding, the reorganized company shall pay to the trustee under the mortgage, as an installment on a sinking fund, a sum equal to one-half of 1 percent of the maximum principal amount of series A bonds, at any time previously authenticated and delivered under the first mortgage, if sufficient available net income for the previous year is available for such purposes after the deductions made pursuant to paragraphs (1) and (2) of the subdivision herein provided and entitled "Determination and application of available net income." Such payments shall be cumulative only to the extent earned and unpaid. Such sinking fund shall be applied to the retirement of the first-mortgage bonds, series A, by purchase in the open market or by call for tender, or by lot, at not exceeding the principal amount thereof and interest to date of acquisition; all first-mortgage bonds, series A, so acquired shall be canceled, and no bonds may be issued under the first mortgage to refund any such first-mortgage bonds, series A.

In case of any unification of the properties of the reorganized company with the properties of any other company, involving a combination of earnings and elimination of separate accounts, income available for fixed charges for the purpose of this paragraph may be determined in such

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manner as may be agreed upon by the consolidated company and approved by holders of first-mortgage bonds, as follows: (*a*) Upon the vote or written consent of the holders of 75 percent of the principal amount of first-mortgage bonds outstanding at the time, or (*b*) if a meeting shall be held upon at least 3 weeks' notice, and if at such meeting the holders of less than 75 percent of the principal amount of first-mortgage bonds outstanding at the time shall be present in person or by proxy, and if such meeting shall be adjourned for at least 3 weeks and if at such adjourned meeting there shall again be less than the holders of 75 percent of the principal amount of first-mortgage bonds present in person or by proxy, and if such meeting shall again be adjourned for at least 3 weeks, then at such second adjournment the vote of 75 percent of the principal amount of the first-mortgage bonds present in person or by proxy at the meeting shall constitute the approval of the holders of the first-mortgage bonds for the purposes of this paragraph.

Within the limits hereinbefore set forth, additional first-mortgage bonds of series A or of one or more other series may be issued under the first mortgage ranking *pari passu* as to lien with the $12,000,000 principal amount of first-mortgage bonds, series A, to be authenticated and delivered in the reorganization. Such bonds in a principal amount not exceeding $500,000 may be authenticated and delivered at any time or from time to time on the order of the company and may be used for any proper corporate purpose. Bonds so authenticated and delivered are herein called "free bonds." Such bonds may also be issued from time to time by the reorganized company to reimburse it for expenditures made after the effective date of the plan for the following purposes: The improvement, construction, completion, or acquisition by the reorganized company of any property except equipment, or of any part or interest or right in any property, except equipment; provided that the same shall be used or useful upon or in connection with the railroads

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of the reorganized company or the operation or conduct thereof and shall be or become subject to the first lien of the first mortgage, and the title thereto shall be vested in the reorganized company. Bonds may also be issued against deposited cash which may be paid out to reimburse the reorganized company for expenditures made after the effective date of the plan for the purposes set forth in the foregoing sentence. Bonds may be issued and deposited cash paid out for such purposes only to the extent that the principal amount of all bonds (other than free bonds and emergency bonds) issued for such purposes, plus the amount of deposited cash paid for such purposes, shall not in the aggregate exceed 75 percent of the net increase (without deducting credits to investment account for such part of the Okeechobee branch extending north of Okeechobee as may be abandoned) after the effective date of the plan, in the reorganized company's investment in road, not charged to the capital fund, so long as the reorganized company shall keep its books of accounting upon a retirement basis.

There may be included in the first mortgage by the reorganization managers, with the approval of this Commission, such necessary and appropriate additions to and alterations of the terms of the mortgage as may be required by reason of changes in accounting to preserve the same intent and effect of the terms of the new mortgage with respect to the immediately preceding provision relative to the extent to which bonds may be issued and deposited cash paid out for the purposes set forth in said paragraph, and also with respect to any other terms of the first mortgage to preserve the intent and effect of which any such additions to, and alterations of, the mortgage shall be necessary.

Bonds may also be issued for the purchase, payment, redemption, or refunding of any bonds secured by the first mortgage, except that bonds, other than emergency bonds the issuance of which is hereinafter provided for, retired through the operation of any capital fund or any sinking fund which may be constituted for any series of first-mort-

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gage bonds shall not be reissued, and no other first-mortgage bonds shall be issued in lieu thereof.

No bonds issued under the first mortgage shall be pledged if as a result of such pledge the aggregate principal amount of all first-mortgage bonds then under pledge, in excess of the principal amount of all loans so secured, will exceed 10 percent of the aggregate principal amount of all first-mortgage bonds then authenticated and uncanceled.

The first mortgage shall also contain a provision for the right to authenticate and deliver "emergency bonds" free from the restrictions hereinbefore set forth, provided that their authentication and delivery is authorized by a resolution of two-thirds of the board of directors to the effect that funds are needed and cannot be obtained except by the sale, exchange, or pledge of the bonds applied for. Any such emergency bonds not retired within 2 years from the date of authentication and delivery shall be retired by means of an annual sinking fund equal to 5 percent of the amount of such bonds issued, and the principal amount of such emergency bonds outstanding shall not exceed at any one time either $1,000,000 or 2 years' fixed charges of the reorganized company, as that term is used in this Commission's uniform system of accounts for steam railroads, whichever sum shall be the greater. If and when emergency bonds so authenticated and delivered are retired, they shall be returned by the reorganized company to the trustee under the first mortgage and canceled, and no bonds shall be authenticated and delivered to refund the bonds so canceled. After such cancelation, but not before, the bonds so canceled shall be deemed never to have been authenticated and delivered for the purpose of determining the right of the reorganized company to the authentication and delivery of emergency bonds or other bonds or withdrawal of deposited cash under the provisions of the first mortgage.

Additional limitations or restrictions on the issuance of first-mortgage bonds may be made by supplemental indenture.

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The first mortgage shall contain provisions giving to the holders of 66⅔ percent in aggregate principal amount of outstanding bonds to be affected by the business to be submitted to the meeting the power to take, by resolution at a bondholders' meeting, the various actions therein specified, including the power to make any modification in or addition to the provisions of the first mortgage, or the rights and obligations of the reorganized company or the rights of the holders of the bonds of all or any series, provided that the bondholders shall have no power (*a*) to extend the maturity of any bonds, or reduce the rate of interest thereon, or otherwise modify the terms of payment of principal (other than a modification of the provisions of any sinking fund or redemption provisions of bonds) or interest, without the consent of the holder of each bond so affected, or (*b*) to effect a reduction of the percentage required for any action authorized to be taken by the bondholders, provided that application of the provisions of this paragraph shall be conditioned upon approval by this Commission of any proposed change of the sinking-fund provisions, or any other provision of the first mortgage, incorporated therein pursuant to the requirements of this plan. In case any series of bonds is affected differently from any other series by the action proposed, the vote of holders of 66⅔ percent in aggregate principal amount of each such series so differently affected shall also be required. Provision shall be made whereby bondholders may vote at such meeting by proxy.

General-mortgage bonds.—The general mortgage shall constitute a lien, subject to the lien of the first mortgage so far as it attaches, and any prior liens, upon all property of the reorganized company owned upon consummation of the plan and thereafter required, and a first lien on other property to the extent permitted by the terms of the first mortgage.

The general-mortgage bonds, other than as to those to be issued in the reorganization, shall be unlimited as to

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aggregate principal amount, shall be issuable from time to time in different series, subject to such limitations and restrictions as may be specified in the general mortgage, shall be payable on such date or dates, have such denominations, bear interest at such rates, and contain such provisions as to accumulation of interest, redemption, conversion, taxes, place or places and money or moneys of payment, registration, and sinking funds, and have such other characteristics, as may be prescribed by the board of directors of the reorganized company at the time of issue, but all general-mortgage bonds shall be equally secured by the lien of the general mortgage. Bonds of any series issued under the general mortgage (except the series to be authenticated in reorganization) shall bear fixed or contingent interest as may be determined by the board of directors of the reorganized company. The general mortgage shall provide that bonds issued in the future in addition to the general-mortgage bonds to be issued in the reorganization shall be issuable from time to time to refund outstanding first-mortgage bonds or general-mortgage bonds for the purposes and subject to the same restrictions applying to the issue of additional first-mortgage bonds as stated in the next preceding section (first-mortgage bonds) of this order, to the extent that first-mortgage bonds are not issued for such purposes.

The general-mortgage bonds to be issued in reorganization shall consist of $4,500,000, principal amount, of income bonds, series A (hereinafter referred to as income bonds), which shall be authenticated and delivered ratably to holders of the now outstanding first and refunding mortgage 5-percent bonds. The income bonds shall mature 75 years after date, bear interest at the rate of 4½ percent per annum, due and payable as hereinafter provided, and be redeemable in whole or in part at the option of the reorganized company or for the sinking fund (hereinafter described) on May 1 in any year except the first year following consummation of the plan, on 30 days' notice at their principal amount plus (*a*) full interest for the last preceding

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year and all unpaid accumulated interest (as defined) for prior years and (*b*) interest at the rate of 4½ percent per annum from the last preceding December 31 to the redemption date.

Interest on the income bonds at the rate of 4½ percent per annum, and ratably for any shorter income period, shall (up to the limits of accumulation hereinafter prescribed) become absolutely due as a debt on December 31 in each year but shall be payable on May 1 of the next succeeding year or thereafter as provided below. Such interest shall be mandatorily payable (except as hereinafter provided) only out of available net income of the reorganized company that remains after making deduction for the capital fund as hereinafter provided in the subdivision entitled "Determination and application of available net income" and any sinking fund for first-mortgage bonds which may be deductible before such interest. Unpaid interest shall accumulate up to the maximum amount of 13½ percent, but no more. If such maximum accumulation is reached, no further accumulations shall be made unless the amount of accumulated interest is later reduced, in which case unpaid interest accruing after such reduction in accumulated interest may again be accumulated from time to time, but the total accumulation shall never exceed a maximum of 13½ percent. Accumulated interest shall be mandatorily payable on May 1 of any subsequent year (*a*) whenever and to the extent that there is available net income for the preceding calendar year remaining after the deductions made pursuant to paragraphs (1), (2), and (3) of "Determination and application of available net income" or (*b*) in any event (whether earned or not) at the maturity or on redemption of the income bonds. For the purposes of the three preceding sentences, payment of interest shall be considered as applied to interest accrued for the last preceding income period before being applied to accumulations. The board of directors of the reorganized company at any time in its discretion may pay out of any funds lawfully available

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therefor any interest due or accrued on the income bonds, even if not earned.

No interest shall be paid on income bonds in any year if the amount would be less than one-fourth of 1 percent, and all payments shall be in multiples of one-fourth of 1 percent. Any excess available for interest but not paid because of the foregoing provision shall be reserved and added to the income applicable to interest on the income bonds for succeeding calendar year or years. If there are outstanding general-mortgage bonds of different series bearing contingent interest, the amount applicable to interest on such bonds shall be distributed among the respective series in proportion to the unpaid interest at the time accumulated on the bonds of such series, respectively.

The general mortgage shall provide for a sinking fund for income bonds, the annual payments to be made on May 1, beginning on the first May 1, following the close of the first calendar year in which the reorganized company operates, and to be equal to one-half of 1 percent of the largest principal amount of income bonds at any time previously authenticated and delivered, (and ratably for the first income period if it is less than 1 year) if sufficient available net income for the previous income period is available for such purpose after the deductions made pursuant to paragraphs (1), (2), (3), and (4) of the subdivision entitled "Determination and application of available net income." Such sinking funds shall be applied to the retirement of the income bonds by purchase in the open market or by call for tender or by lot, at not exceeding the principal amount thereof and interest to date of acquisition; all income bonds so acquired shall be canceled; and no bonds may be issued under the general mortgage to refund any such income bonds.

The reorganization managers may, upon approval by this Commission, make such necessary and appropriate additions to and alterations of the terms of the general mortgage as may be required by a change in accounting

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practice by the debtor or the reorganized company in respect of its operating revenues and operating expenses from a retirement to a depreciation basis as hereinbefore referred to in the preceding section of this order dealing with the first-mortgage bonds.

The general mortgage shall contain provisions giving to the holders of 66⅔ percent in aggregate principal amount of outstanding bonds to be affected by the business to be submitted to a bondholder's meeting the power by resolution at such meeting to take the various actions therein specified, including the power to make any modification in or addition to the provisions of the general mortgage or the rights and obligations of the reorganized company as set forth therein or the rights of the holders of the bonds of all or any series, provided that the bondholders shall have no power to (*a*) extend the maturity of any bonds, or otherwise modify the terms of payment of principal (other than a modification of the provisions of any sinking fund) or modify the terms of payment of accumulated interest, without the consent of the holders of each bond so affected, or (*b*) effect a reduction of the percentage required for any action authorized to be taken by the bondholders, provided that application of the provisions of this paragraph shall be conditioned upon approval by this Commission of any proposed change of the sinking-fund provisions, or any other provision, of the first mortgage, incorporated therein pursuant to the provisions of this plan. In case any series of bonds is affected differently from any other series by the action proposed, the vote of holders of 66⅔ percent in aggregate principal amount of each such series so differently affected shall also be required. Provision shall be made whereby bondholders may vote at such meeting by proxy.

Determination and application of available net income.—Available net income shall be determined for each calendar year (except that the first period may be less than a calendar year in the event the plan shall be consummated on some date other than January 1st), on or before May 1 of the

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following year, beginning with the calendar year in which the plan shall be consummated, and continuing thereafter so long as any income bonds remain outstanding. The period for which such available net income shall be determined is herein designated as the income period. When no income bonds remain outstanding, the provisions of this subdivision shall cease to be operative.

Available net income for each such income period shall be determined by deducting all fixed charges of the reorganized company accrued during such period from the reorganized company's income available for fixed charges for such period (determined in accordance with the accounting rules of this Commission or other authority having jurisdiction in the premises at the time, or to the extent not governed by such accounting rules, in accordance with sound accounting practice), except that fixed interest up to the last day of the month preceding consummation of the plan shall be deducted for the period at the rate of 4½ percent on the old first-mortgage bonds instead of at the reduced rate provided for in the plan on the new first-mortgage bonds.

Available net income shall be determined for each such period as the accounts shall be stated on the books of the reorganized company when its accounts are closed for such period, without adjustments, except that: (1) If in respect of any period the available net income is a deficit, the amount of such deficit may, in the discretion of the board of directors of the reorganized company, be carried forward and be deducted in determining available net income for the succeeding period or periods until such deficit (or accumulated or remaining deficits) be extinguished by earnings which, in the absence of such deficit or deficits, would be available net income; and (2) any adjustments necessary to correct the income accounts of any prior period shall be made by appropriate entries which may either be made in the accounts of the current period or, in the discretion of the board of directors of the railroad company, and subject to

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the approval of this Commission or of such other governmental agency, if any, as at the time may have jurisdiction over the accounting practice of the railroad company, may be made, in whole or in part, in the accounts of any subsequent period or periods, and any such debits or credits made in the accounts of any period to adjust entries in the income accounts of prior periods shall be treated as income items for the period in which entered on the books, whether cleared through income or profit and loss accounts.

Available net income for each income period shall be applied to the following purposes and in the following order:

(1) Available net income for each of the first 10 income periods shall, to the extent of 2 percent of total railway operating revenues for such period and to the extent of 1 percent for each period thereafter, be applied to the creation of a capital fund. After the first 10 periods after the effective date of the plan, payments into the capital fund each period may be increased over the amount mandatorily prescribed herein by such additional amount up to a total of 2 percent of total railway operating revenues for such period as the board of directors of the reorganized company may determine.

The appropriation for the capital fund shall be reduced by the amount of any charges for depreciation of roadway and structures made in such income period to the extent that such charges exceed the amount which would have been charged to operating expenses in connection with the property for which depreciation is so charged for such income period under the present accounting rules of this Commission, and may in the discretion of the board of directors of the reorganized company be increased by the amount, if any, by which available net income for the last preceding income period shall have been less than the maximum amount permitted for the capital fund for such period, but no deficiency shall be made up for more than one preceding period. Moneys in the capital fund may be applied to, or

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used to provide for, or to reimburse the treasury of the reorganized company for, capital investments, as defined by this Commission's classification of income, profit and loss, and general balance sheet accounts, for steam roads, Account No. 701, Investment in Road and Equipment, or such substituted account as may at the time be in effect, to the extent that such capital investments have been made or contracted for during such income period or within 3 months thereafter, but including therein improvements to equipment, payments made upon new equipment, or initial and principal payments upon equipment leased under equipment trusts or purchased under conditional-sale agreements only to the extent that such payments during such income period shall in the aggregate exceed depreciation of equipment charged against income for such income period, provided, however, that (*a*) the capital fund may be applied only to such part of the cost capital investments as hereinabove defined as remains after deducting therefrom all retirements of roadway and structures charged to operating expenses in such income period; this provision to be subject, however, to appropriate modification, if necessary, in the event the debtor or the reorganized company shall change its accounting practice from a retirement to a depreciation basis (as hereinbefore referred to) as the reorganization managers, with the approval of this Commission, may determine will carry out the same intent and effect; (*b*) to the extent that expenditures are so provided for or reimbursed out of the capital fund, the reorganized company shall not thereafter have the right to issue any bonds or other evidences of indebtedness or withdraw deposited cash to capitalize or reimburse such expenditures, provided, however, that such expenditures (if for purposes for which first-mortgage bonds or general-mortgage bonds may be issued) may, within such limits, if any, as may be specified in the first mortgage or the general mortgage, be used to supply, in whole or in part, the excess of capital expenditures required to be certified under either such mortgage

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over the principal amount of the bonds that may be issued or the amount of deposited cash that may be withdrawn under the terms thereof; and (*c*) any amount which is available for the capital fund under the foregoing provisions may be used, in addition to the uses hereinbefore allowed, to retire first-mortgage bonds, to pay any debt at the maturity thereof, or to pay fixed charges to the extent not earned, but any amount so available which is not expended or appropriated to meet liabilities incurred before the end of the year in respect of which it shall have been set aside or within 3 months thereafter may be accumulated up to $300,000, but any amount in excess of such accumulation shall not be carried forward. If any sums set aside in the capital fund are used to pay any fixed charges, no contingent charges and no dividends shall be paid until the capital fund has been reimbursed for the funds so used.

(2) Any then remaining available net income for any income period shall, to the extent required, be applied to the payment of any sinking fund established for emergency bonds.

(3) Any then remaining available net income for any income period shall, to the extent required, be applied to the payment of the sinking fund herein provided for the first-mortgage series A bonds and to payment of any sinking fund provided for any other issues of first-mortgage bonds.

(4) Any then remaining available net income for any income period shall be applied to the payment on the next succeeding May 1 of interest on the outstanding income bonds accrued during the last preceding income period, and of any accumulated unpaid interest thereon.

(5) Any then remaining available net income for any income period shall, to the extent required, be applied to the payment on the next succeeding May 1 of any sinking

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fund provided for general-mortgage bonds including the sinking fund provided for the income bonds.

(6) Any then remaining available net income for any income period may be applied to any proper corporate purpose of the reorganized company, including dividends on the capital stock of the reorganized company.

Dividends may be paid on stock of any class out of the income of any income period prior to the close of such income period, if, but only if, prior to the declaration of such dividends, the board of directors of the reorganized company shall have determined that the available net income for such period applicable for the purposes specified in foregoing paragraphs (2), (3), (4), and (5) will be more than sufficient to pay the amounts payable out of such available net income pursuant to said paragraphs, and such amount shall have been deposited in trust for the purposes specified in said paragraphs.

In case of any unification of the properties of the reorganized company with the properties of any other company as a result of which it becomes desirable to combine the earnings of such properties and eliminate separate accounts, income available for fixed charges for the purpose of computing available net income applicable to interest or sinking fund for the income bonds for any succeeding fiscal year may be determined in any manner approved by holders of income bonds as follows: (*a*) Upon the vote or written consent of the holders of 75 percent of the principal amount of income bonds outstanding at the time, or (*b*) if a meeting shall be held upon at least 3 weeks' notice, and if at such meeting the holders of less than 75 percent of the principal amount of income bonds outstanding at the time shall be present in person or by proxy, and if such meeting shall be adjudged for at least 3 weeks, and if at such adjourned meeting there shall again be less than the holders of 75 percent of the principal amount of income bonds present in person or by proxy, and if such meeting shall again be

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adjourned for at least 3 weeks, then at such second adjournment the vote of 75 percent of the principal amount of the income bonds present in person or by proxy at the meeting shall constitute the approval of the holders of the income bonds for the purposes of this paragraph.

Capital stock.—There shall be authorized and issued 450,000 shares of capital stock of the reorganized company without par value which shall be issued in the reorganization pro rata to the holders of the first and refunding mortgage bonds. Holders of such capital stock shall be entitled to 1 vote per share on all matters. The charter or certificate of incorporation of the reorganized company shall provide for cumulative voting for directors. Holders of such capital stock shall not have any preemptive right to subscribe to any additional issues of stock of any class or of securities convertible into stock of any class or of warrants or options for the purchase of securities or stock of any class.

Treatment of existing securities and claims.—Holders of bonds outstanding shall receive (*a*) in respect of the principal amount thereof, in the case of the first-mortgage 4½-percent bonds, due June 1, 1959, and (*b*) in respect of the principal amount thereof and accrued interest thereon to the effective date of the plan, in the case of the first and refunding mortgage 5-percent bonds, due September 1, 1974, new securities issuable under the plan at the following rates for each $1,000, principal amount, of first-mortgage 4½-percent bonds, and for each $1,000, principal amount, of first and refunding mortgage 5-percent bonds and accrued interest thereon to the effective date of the plan:

	First-mortgage bonds, series A	General-mortgage bonds, income, series A	Capital stock, without par value Shares
First-mortgage 4½-percent bonds	$1,000	.....	....
First and refunding mortgage 5-percent bonds, series A	.....	$100	10

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Accrued interest shall, subject to the approval of the court, be paid on the old first-mortgage 4½-percent bonds of the debtor at the rate of 4½ percent per annum to and including the last day of the month preceding the consummation of the plan, assuming no unreasonable delay in consummation of the plan and no materially adverse change in cash position of the debtor.

The claim, if any, as finally determined, of the trustee for equipment-trust certificates, series D, against the trustees shall be paid in cash or assumed by the reorganized company upon such terms as the board of directors of the reorganized company may determine, subject to the approval of the court.

The interests or equities of (1) holders of present unsecured claims against the debtor and (2) holders of the capital stock of the debtor have no value, and nothing shall be distributable to them.

Claims not affected by plan.—The following claims to the extent allowed are not affected by the plan: (*a*) Claims arising from the administration of the trust estate and operation of the property subsequent to the filing of the petition under section 77 of the Bankruptcy Act, as amended, on January 25, 1941; (*b*) obligations of the receivers incurred in the receivership proceeding between the time of appointment of the receivers on August 31, 1931, and the filing on January 25, 1941, of the petition under section 77 of the Bankruptcy Act, as amended, and reasonable administrative expenses, and allowances in that proceeding, to the extent that provision shall be made therefor by the court in the present proceedings; (*c*) claims entitled to priority over one or more of the mortgages of the debtor, including labor claims entitled to such priority; (*d*) claims for taxes and special assessments; and (*e*) claims for interest and principal not paid at maturity because not presented for payment. To the extent that such claims, liabilities or obligations are not paid by the debtor or the trustees of the

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estate of the debtor pursuant to order of the court in the reorganization proceeding, they shall be assumed by the reorganized company and paid in cash in due course, provided that any amounts of the foregoing classes (*a*) to (*c*), inclusive, assumed by the reorganized company shall constitute a charge upon the reorganized company prior in lien to all new securities issued under the new first mortgage and new general mortgage. All such claims, liabilities, and obligations may be adjusted or compromised and dealt with or paid or discharged by the reorganized company, all as may be determined by the board of directors of the reorganized company subject to approval by the court. In view of the above provisions, the interests of the holders of such claims of the foregoing classes (*a*) to (*e*), inclusive, against the debtor will not be materially and adversely affected by the plan.

Expenses of reorganization.—All costs of administration of the trustees and all expenses of reorganization, including the amounts of all claims for compensation and expenses allowed pursuant to section 77 of the Bankruptcy Act, shall be paid in cash.

Assumption or disaffirmance of leases or contracts.—The reorganized company shall be deemed to have assumed such of the contracts of the debtor which are executory in whole or in part, including any executory leases and liabilities under guaranties, as shall have been affirmed by the trustees of the estate of the debtor in the reorganization proceeding with the approval of the court, and also any executory contracts made by the trustees of the estate of the debtor with the approval of the court in the reorganization proceeding which, by their terms, do not terminate at the conclusion of the reorganization proceeding. The interests of the holders of such claims will not be materially and adversely affected by the plan.

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Carrying Out the Plan

Reorganization managers.—The reorganization managers shall be three in number, and shall carry out the plan under the supervision and control of the court. One shall be designated by the group of insurance companies described in the report and referred to therein as the "institutional group," one by the deposit committee for the debtor's first and refunding mortgage bonds, and one by the court. They shall have general supervision of the carrying out of the plan.

If any party or parties entitled to do so shall fail to designate a reorganization manager within such time as the court shall consider reasonable, the court shall appoint such manager.

The reorganization managers shall have, subject to any requirements of law and requisite approval of the court and this Commission, full and plenary discretionary power to take all such action and to enter into such arrangements, financial and otherwise, as they may deem necessary or advisable in order to consummate and carry into execution the plan or any modification thereof; to fix the compensation of persons whose services they may employ in the execution of their powers; to incorporate the reorganized company (if they decide to form a new corporation); to supervise the transfer of any properties to the reorganized company and to make agreements and commitments for its account, subject to its confirmation; to provide the method by which creditors and other interested parties may participate in the plan; to determine the form and provisions, so far as not otherwise herein specifically provided, of the certificate of incorporation of the reorganized company, if a new corporation is to be formed, and its bylaws, or to effect the necessary amendments to the certificate of incorporation of the existing Florida East Coast Railway Company and its bylaws, the new bonds and the mortgages under which the same shall be issued, the stock certificates, and

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any other instruments deemed by the reorganization managers to be necessary or proper in connection with the plan; and to do all other acts in their discretion advisable for carrying out the plan.

The court shall, however, before they are put in use, approve the articles of incorporation, amendments to articles of incorporation, bylaws, mortgages, trust agreements, bonds, securities, and stock certificates.

The reorganization managers may act by a majority as from time to time constituted, at a meeting or in writing without a meeting. They may employ such agents, attorneys, and others as they may deem desirable for the purposes of the plan. The reorganization managers may from time to time delegate to others any power or discretion conferred upon them by the plan; and the managers shall not be liable for any action taken or omitted by them in good faith or by any person employed by them in good faith, except for their respective individual malfeasance or willful neglect.

The reorganization managers shall not be authorized to solicit deposits of securities for purposes other than exchange or to solicit authorizations to represent security holders, except upon approval by this Commission of the terms of such solicitation, pursuant to section 77 (p) of the Bankruptcy Act.

Acceptance of the plan, participation therein, and execution thereof.—Acceptance of the plan shall include acceptance of the new bonds, mortgages, stock certificates, and all instruments necessary and appropriate to the carrying out of the plan, other than the orders of the court and this Commission, to the same effect as though the terms of such instruments were set out in full herein.

The method by which creditors and other parties in interest may, after confirmation of the plan by the court, participate therein shall be determined by the reorganization managers and notice thereof duly given.

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If so ordered by the court, the plan, after finding by the court that it is fair and equitable, may be executed by a sale at public auction, at not less than a fair upset price as determined by the court, of all or any part of the properties and assets of the debtor, free from all liens or claims; other than those herein expressly stated not to be affected by the plan. Upon any such sale, the properties and assets offered for sale may be purchased for the benefit of the reorganized company by the reorganization managers, or by a purchaser nominated by the reorganization managers, and in that event there shall be applied on account of the purchase price the distributive share, if any, of the proceeds of such sale of all securities the holders of which shall have assented to the plan, and the securities, though not assenting to the plan, of all classes which shall be bound by the plan in accordance with the provisions of section 77 of the Bankruptcy Act, as amended. The reorganization managers or their representative may bid, at any such sale, such amounts as the reorganization managers may determine.

All properties and assets so sold which are purchased by the reorganization managers or their representative shall be transferred to the reorganized company.

In the event of any such sale, the reorganization managers may in their discretion sell all or any portion of the new securities distributable under the plan in respect of the securities of any creditor, if neither such creditor nor the class to which such creditor belongs shall be bound by the plan in accordance with the provisions of section 77 of the Bankruptcy Act, as amended. The reorganization managers may in their discretion allot to nonassenting creditors of any class which shall not have accepted the plan, upon the request of such creditors, the securities allocated to them under the plan, in lieu of their aliquot share of the proceeds of the sale of the properties. The proceeds of any such sale of securities, and, with the approval of the court, any other funds which, in the judgment of the reorganization

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managers, are available among the assets of the debtor estate or of the reorganized company, may be used to pay the portion of the purchase price of property acquired payable in cash on any such sale.

Upon any such sale, nonassenting creditors of any class which shall not be bound by the plan in accordance with the provisions of section 77 of the Bankruptcy Act, as amended, and/or the stockholders, shall be entitled to receive, in lieu of the securities, if any, otherwise issuable under the plan, their equitable proportion of the proceeds of such sale, after deducting therefrom all expenses of such sale and the amount which would be required to pay in full, of principal and unpaid interest accrued to the date of such sale, all creditors whose claims equitably marshaled are prior in lien or superior in equity to the claims of such nonassenting creditors or the rights of such stockholders.

In the event of any such sale, the plan shall not otherwise be carried out unless the reorganization managers or their representative shall be the successful bidder for substantially all the properties and assets offered for sale.

Board of directors.—The board of directors of the reorganized company shall consist of not less than 11 nor more than 17 members who shall consist initially of such persons as may be designated by the reorganization managers with the approval of the court.

The by-laws of the reorganized company may provide that the board of directors shall be divided into three approximately equal classes whose terms of office shall respectively expire at different times. The first class shall consist of directors whose term of office shall expire in the year following the year in which the plan is consummated. The second class shall consist of directors whose term of office shall expire in the second year following the year in which the plan is consummated, and the third class shall consist of directors whose term of office shall expire in the third year following the year in which the plan is consummated.

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Notice and construction of plan.—Unless otherwise provided in section 77 of the Bankruptcy Act, as amended, or any order or orders of the court in the reorganization proceeding or of the Commission, whenever notice shall be required or permitted to be given under or pursuant to the plan, such notice shall be given by publishing a copy thereof once in each week for 2 successive weeks in one newspaper published and of general circulation in the city of Jacksonville, State of Florida, and in one newspaper published and of general circulation in the city of Miami, State of Florida, and also (1) in case of notice to security holders who have accepted the plan, by mailing such notice, postage prepaid, to the addresses of such security holders set forth in the acceptances signed by them, and (2) in case of notices to security holders who shall not have accepted the plan, by mailing such notice, postage prepaid, to such security holders whose names and addresses are available; but failure to mail any such notices, or delay in mailing any such notices, shall not invalidate the notice by publication provided above, which alone shall be sufficient.

The construction of the plan by the court shall be final and conclusive. The court shall have the power to cure any defect, supply any omission, or reconcile any inconsistency, in such manner or to such extent as may be necessary or expedient in order to carry out the plan effectively.

Taxes due the United States.—The debtor, as reorganized, or the transferee of the property, will assume the liability for, and will pay in full in due course, any and all taxes due the United States from the debtor or the trustees for any taxable period prior to the date of confirmation of a plan of reorganization, without requiring proof thereof in this proceeding and without prejudice by reason of not having been proved herein, subject, however, to the statutes of limitation normally applicable to the assessment and collection of such taxes, provided, however, that the liabil-

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ity of the reorganized company for any taxes which are the subject of litigation on the date of the confirmation of the plan of reorganization, or which may become the subject of litigation on any date thereafter and prior to the expiration of the applicable statute of limitation, shall be determined pursuant to law, and provided, further, however, that this provision shall not be deemed to preclude either the debtor, the trustees, or the reorganized company from contesting the merits of any such tax in the manner provided by law.

It is further ordered, That, except as thus modified, the terms and conditions of the prior order of division 4 of this Commission of April 6, 1942, in this proceeding shall be and remain in full force and effect.

It is further ordered, That the authorization and approval herein granted by this Commission are upon the condition that the journal entries covering the necessary accounting adjustments under the order will be submitted to this Commission for approval before they are recorded on the books of the reorganized company under the plan of reorganization herein approved.

It is further ordered, That nothing herein contained shall be, or be construed as, a grant of authority for the issue of any securities, assumption of obligations, transfer of any property, sale, consolidation, or merger of the debtor's properties, or pooling of traffic, pursuant to either the Bankruptcy Act or the Interstate Commerce Act, until further action by this Commission upon confirmation of the plan by the Court.

It is further ordered, That, except as aforesaid, the petitions for modification of the report and order of April 6, 1942, be, and they are hereby, denied.

Court's Order and Opinion Filed October 19, 1943 Sustaining Objections to Plan of Reorganization and Referring Same Back to the Interstate Commerce Commission.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF FLORIDA,

JACKSONVILLE DIVISION,

IN BANKRUPTCY.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827 J Bkptcy.

On objections to plan of reorganization for Florida East Coast Railway Company, formulated by Interstate Commerce Commission pursuant to Section 77 of the Bankruptcy Act. Objections sustained.

DAVIS, POLK, WARDWELL, SUNDERLAND & KIENDL, and EDGAR G. CROSSMAN, for petitioning creditors.

RUSSELL L. FRINK, for reorganization Trustees Scott M. Loftin and John W. Martin.

JOHN B. L'ENGLE, for Debtor Florida East Coast Railway Company.

FRANK P. FLEMING, GUY W. BOTTS, GILES J. PATTERSON, HENRY P. ADAIR, WHITE & CASE, STOCKTON, ULMER & MURCHISON, JOHN G. JACKSON, OSBORNE, COPP & MARKHAM, CHARLES COOK HOWELL, CHARLES COOK HOWELL, JR., MILAM, MCILVAINE & MILAM, PERCIVAL

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E. JACKSON, JOHN A. BUSSIAN, FRANK E. BRYANT, PITNEY, HARDIN & WARD, and J. HENRY BLOUNT, for intervenors.

Opinion of Court filed October 19, 1943.

STRUM, District Judge:

Florida East Coast Railway Company operated under an equity receivership from August 31, 1931 until January 25, 1941, when reorganization proceedings were instituted under Section 77 of the Bankruptcy Act, 11 U. S. C. A. 205.

As of December 31, 1940, the debtor railway's capitalization was:

Capital stock outstanding	$37,500,000.00
First mortgage 4½% bonds, due January 1, 1959	12,000,000.00
First & refunding mortgage 5% bonds, due September 1, 1974	45,000,000.00
Equipment trust certificates, series "H" 4½%	180,000.00
	$94,680,000.00
Receivers' liabilities on said date:	
Receivers equipment trust certificates, series "I" 3%	$ 1,116,000.00
Total capitalization and Receivers' liabilities	$95,796,000.00

As of December 31, 1940, the Receivers had on hand cash aggregating $1,301,857.37. Interest on the First Mortgage 4½% bonds and on all equipment trust certificates was currently paid. Interest on the 5% First & Refunding bonds (due $1,125,000.00 semi-annually) was in default since September 1, 1931, aggregating $21,375,000.00 on December 31, 1940. Unsecured indebtedness aggregated $2,688,668.32, plus interest. Potential unliquidated liabilities, disputed and in litigation, were about $750,000.00.

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After hearings pursuant to 11 U. S. C. A. 205 (d) the Interstate Commerce Commission certified to this Court for consideration a plan of reorganization (252 I. C. C. 453, 731) based upon the following capitalization:

Equipment notes	$ 1,992,000.00
First mortgage series A bonds,—to holders of present 4½% First Mortgage bonds	12,000,000.00
General mortgage series A bonds,—to holders of present 5% First & Refunding bonds	4,500,000.00
Common stock (no par) 450,000 shares,—to holders of present 5% First & Refunding bonds	18,508,000.00
Total capitalization	$37,000,000.00

In addition to the $12,000,000.00 of new First Mortgage bonds to be distributed to present First Mortgage bondholders, the proposed new First Mortgage authorizes the issuance of an additional $6,000,000.00 in bonds for new capital expenditure. This amount includes $500,000 in "free bonds," to be issued upon resolution of the new Board of Directors, and to be used for any proper corporate purpose, the aggregate limit of bonds under the new mortgage being $18,000,000, unless enlarged by a vote of 66⅔% of all outstanding bonds under the new mortgage.

The matter is now before the Court for consideration of objections to the proposed plan, interposed by the holders of approximately 80% of the First & Refunding bonds and by the holders of about 6% of the First Mortgage bonds. No creditor has appeared in support of the plan.

Since the Interstate Commerce Commission considered the debtor's financial condition and formulated the plan now before the Court, substantial and unforeseen improvements in the affairs of the debtor have developed as follows:

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(a) Earnings have greatly increased over prior years, as shown below:

Year	Net Railway Operating Income	Total Income Available for Fixed Charges and Contingencies
1939	$ 743,699	$ 810,899
1940	985,219	994,131
1941	1,580,527	1,601,964
1942	7,873,959	7,985,400
1943[1]	9,004,940	9,141,860

(b) As a result of these increased earnings, the cash position of the reorganization Trustees as of October 1, 1943, is as follows:

Cash	$14,288,433
Less obligations against above	224,678
	$14,063,755
Cash, special deposits awaiting determination of mortgage liens	546,446
War bonds purchased for tax anticipation purposes	3,000,000
Due Trustees on traffic balances, net	185,164
Total cash, or equivalent, October 1, 1943	$17,795,365

This is an impressive improvement over the Trustees' cash position as of December 31, 1940 ($1,301,857.37) which the Commission had before it when the present plan was under consideration.

(c) Since the present plan was formulated, interest coupons maturing September 1, 1931, March 1, 1932, and

Note (1): 1943. Net Railway operating income: January through August actual $7,018,276; September through December estimated $1,986,664; total $9,004,940.

Total income available for fixed charges, January through August actual $7,050,196; September through December estimated $2,091,664; total $9,141,860.

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September 1, 1932, on the debtor's First & Refunding 5% bonds, have been paid in the aggregate sum of $3,375,000. Interest on the First Mortgage 4½% bonds have been paid in full to June 1, 1943. Outstanding equipment notes have been reduced to $1,226,000.

The 1942 and 1943 earnings above shown are abnormal and temporary. They are not regarded by the Court as a sound basis for capitalization of the new company. Indications are, however, that the present rate of earnings will continue at least through 1943, so that the estimated cash on hand or available, as of December 31, 1943, after payment of State taxes but before payment of Federal income taxes for 1943, will be $18,715,808[2]. Deducting $4,135,603, to meet Federal income tax requirements for 1943, leaves $14,580,205, estimated net cash as of December 31, 1943, after payment of all taxes, both State and Federal, which estimate appears certain of fulfillment, as the conditions which have produced these earnings show no indication of early abatement, but will probably continue well into 1944.

This sum of $17,795,365 on hand October 1, 1943, is an existing fact, not a prophecy. It is in sharp contrast with the Trustees' cash position of $1,301,857.37, as of December 31, 1940, which was the sum considered by the Commission when the present plan was formulated. The latter sum was barely sufficient to cover the company's requirements for working capital after paying reorganization expenses, to say nothing of capital fund requirements. When the present plan was formulated, this tremendous increase in liquid cash was not, and could not have been, foreseen by the Commission nor by the security holders.

This cash now in the hands of the reorganization Trustees, or available to them, greatly exceeds the requirements of the reorganized company. It approximates 50% of the proposed new capitalization. Net cash available to the

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Note 2: Cash $15,169,362; War Bonds $3,000,000; special deposits $546,446; total $18,715,808.

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Trustees on December 31, 1943, after payment of all taxes, will exceed the existing First Mortgage bonds by approximately $2,580,205. If the present plan were approved, this sum of fourteen and a half million dollars—to say nothing of future increases—would constitute a floating surplus, earning no income, which until otherwise disposed of would merely enhance the value of the new corporate stock.

This cash represents net earnings of the company, on which the bondholders have a lien. To the extent that it is prudently available, the bondholders are entitled to the benefit of this surplus cash, either by having it applied in an equitable manner in satisfaction of their claims, or by having it otherwise difinitely allocated by the Commission as a component part of the reorganization plan, so that it may be equitably applied to the best advantage of all concerned. It is too great a sum to be left simply as a floating surplus, in a corporate disposition of which the minority security holders would have little voice. To approve the present plan, ignoring the existence of this fund, would be improvident and inequitable to all security holders, especially to the minority. Such a course would not afford due recognition to the rights of the present bondholders, who have liens on these funds.

If the post-organization corporate directors were disposed to use this fund to pay off $12,000,000 of the proposed new First Mortgage bonds, it would be necessary under the terms of that mortgage to pay a 5% "call" premium, aggregating $600,000. The existing $12,000,000 First Mortgage bonds could be retired as a part of this Section 77 reorganization, without penalty. If it is feasible to apply $12,000,000 of this cash surplus in discharge of the existing First Mortgage bonds, the capital structure of the new company could be desirably simplified, and its annual cash requirements substantially reduced. Payment of the existing First Mortgage bonds would render unnecessary a judicial determination of existing lien priorities, now in dispute,

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thus avoiding extended and costly litigation, which would further delay this reorganization. If the use of $12,000,000 to discharge the present First Mortgage bonds would leave insufficient funds available for working capital and for future capital expenditures after reorganization, a new first mortgage could be devised, in lieu of existing mortgages, under which two series of bonds could be issued, each sharing pari passu in the security of the mortgage, one series a fixed interest bond of not exceeding $6,000,000 aggregate principal to be used for capital expenditures, the other series an income bond in an appropriate aggregate principal sum, for distribution amongst present First & Refunding bondholders.

Changes in ownership of the First & Refunding bonds occurring since the Commission formulated the pending plan, render desirable, in the Court's opinion, a realignment of reorganization Managers. The present plan provides one Manager to be designated by the Institutional Group of First Mortgage bondholders, who hold about 45% of that issue; one to be designated by the Deposit Committee for First & Refunding 5% bonds, which Committee held about 35% of that issue when the present plan was formulated; and one Manager to be designated by the Court. Florida National Building Corporation, representing the duPont interests, has acquired and now holds substantially more than 50% of the First & Refunding 5% bonds. As the Deposit Committee for First & Refunding 5% bonds now holds only about 3% of that issue, it waives the right to appoint a reorganization Manager.

The Court feels that there should be no more than three Managers in all, of whom one should be designated by the Court, primarily to represent minority and public interests. One should be designated by Florida National Building Corporation. The Court concurs in the designation of a Manager by the Institutional Group of First Mortgage bondholders if its holdings continue substantially as at present. If the First Mortgage bonds are discharged by

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payment, the Institutional Group of course will have no further interest in the reorganization. In this event, the third Manager could either be eliminated or allocated to some other interest. The activities of the reorganization Managers should remain, as now, subject to the Court's approval.

As the effective date of the pending plan (January 1, 1942) has passed, a new effective date should be designated, allowing a reasonable interval within which to complete the pre-requisite statutory procedure.

The Court sustains (1) the objection that the existence of the unallocated cash surplus now on hand renders the pending plan inequitable; (2) the objection of Florida National Building Corporation that its present security holdings entitle it to designate a reorganization Manager; and (3) that a new effective date should be designated. Decision is reserved on all other questions.

On motion of the parties, the proceeding is referred back to the Interstate Commerce Commission in order to afford the Commission an opportunity to re-examine the entire situation in the light of the facts which have developed since the former hearings.

SO ORDERED.

(Signed) Louie W. Strum,
U. S. District Judge.

Endorsed:

"Filed Oct. 19, 1943, Jacksonville, Fla.
Edwin R. Williams, Clerk."

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Summary Accompanying the Interstate Commerce Commission's Supplemental Report dated January 8, 1945.

INTERSTATE COMMERCE COMMISSION

WASHINGTON

FINANCE DOCKET NO. 13170

FLORIDA EAST COAST RAILWAY COMPANY REORGANIZATION

SUMMARY OF SECOND SUPPLEMENTAL REPORT

January 8, 1945.

This report approves extensive modifications of the plan of reorganization of the Florida East Coast Railway Company approved by the Commission, division 4, on April 6, 1942, as modified by the Commission on August 10, 1942.

The major modifications are:

(a) The effective date is changed from January 1, 1942 to January 1, 1946.

(b) The outstanding first mortgage is to be paid in full in cash.

(c) Total permissible capitalization of the reorganized company is increased from approximately $37,000,000, inclusive of equipment obligations, to $40,500,000, exclusive of equipment obligations which will be assumed by the reorganized company. The capitalization will consist of $20,250,000, principal amount, of 75-year first-mortgage (unlimited as to amount of future issue of bonds) series-A income bonds bearing contingent interest at the rate of 4½ percent per annum cumulative up to 45 percent, and

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$20,250,000 of no-par-value common capital stock (if stated at a value of $100 per share), all of such securities to be distributed pro rata to holders of now outstanding first and refunding mortgage bonds of the debtor.

(d) Provision is made for the distribution of cash, at the discretion and upon order of the court at any time before consummation of the plan, to the first and refunding mortgage bondholders, such distributions to be made only after the setting aside of a reserve of not less than $8,700,000 for cash requirements upon reorganization and for improvements and additions and betterments. Any such cash distributions or any appropriations of such cash made upon order of the court entered prior to the effective date of the plan would not operate to decrease the amounts of new securities (or income thereon accruing after the effective date) distributable under the plan to the first and refunding mortgage bondholders. Any such cash distributions or any appropriations of such cash made upon order of the court entered on or after the effective date of the plan would be applied first to payment of interest on the new first-mortgage series-A bonds accrued since the effective date, and second, to decrease the principal amount of new first-mortgage series-A bonds otherwise issuable under the plan.

(e) The new first mortgage will contain provisions (1) for annual payments, after payment of any fixed charges and before the contingent interest on any first-mortgage bonds, into a capital-expenditures fund, the annual payments to be equal to 2 percent of total railway operating revenues, and to be cumulative for 1 year only, (2) for one-half of 1 percent accumulating annual sinking-fund payments on the contingent interest first-mortgage bonds, if earned after payment of fixed charges, capital-fund payments and contingent interest on the first-mortgage bonds for the current year, but before accumulations of unpaid interest on the series-A bonds, and (3) for redemption of the series-A first-mortgage bonds at a premium of 5

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percent for the first 15 years, the premium decreasing progressively to maturity of the bonds, except that for redemption of the bonds for the purposes of the sinking fund the premiums will be one-half of those otherwise prevailing, and (4) for a provision for the future issuance of "emergency bonds" in amounts not to exceed $1,000,000 to be outstanding at any one time.

(f) A voting trust will be created for the new common stock to continue for 5 years after consummation of the plan, the voting trustees to be three in number, all to be approved by the court, two trustees to be designated by the St. Joe Paper Company, owner of a majority in principal amount of the debtor's now outstanding first and refunding mortgage bonds, and the third by the court to represent minority holders of these bonds. The latter trustee shall have the right of election of one-third of the board of directors of the reorganized company, one of such directors to be a member of any finance or executive committee of the board of directors, which may be created by the board. The voting trustees are given the power upon the affirmative vote of a majority in amount of the voting trust certificate holders to sell all any part of the trusteed stock and, in connection with any such sale, to reclassify or alter the stock on such terms as they may determine. The terms of any such sale and of alteration or reclassification of the trusteed stock must be approved by the Commission.

(g) At the termination of the voting trust cumulative voting for directors by holders of the common stock will be permitted.

(h) There will be three reorganization managers, all to be approved by the court, one to be designated by the St. Joe Paper Company, one by the court and the third also by the court to represent the minority holders of the debtor's first and refunding mortgage bonds.

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Summary of Commission's Report of January 8, 1945.

The plan as modified affirms the Commission's previous findings that the claims of unsecured creditors not entitled to priority over the mortgages and the equity of the stockholders are without value and such creditors and the stockholders are denied participation in the plan.

Following are comparisons of the capitalization and annual charges upon consummation, under the plan as previously approved by the Commission on August 10, 1942 and as modified:

Capitalization

	Plan as modified	Former plan approved by the Commission
Fixed-interest debt		
Equipment obligations[1]	$ 666,000	$ 666,000
First-mortgage 40-year, 3¾-(4)-percent bonds	—	12,000,000
Contingent-interest debt		
First-mortgage series-A 75-year, 4½-percent income bonds	20,250,000	
General-mortgage series-A 75-year, 4½-percent bonds	—	4,500,000
Common stock, 202,500 shares (no par value)	20,250,000[2]	19,834,000[3]
Total capitalization	$41,166,000	$37,000,000

[1] For purposes of comparison, the amount of equipment obligations expected to be outstanding on January 1, 1946, exclusive of any which may be incurred hereafter and before consummation of the plan, is stated for both plans.

[2] At a stated value of $100 per share.

[3] Total value of stock stated as difference between $37,000,000 and the total principal amount of all debt obligations.

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Summary of Commission's Report of January 8, 1945.

Annual Charges

	Plan as modified	Former plan approved by the Commission
Fixed interest		
Equipment obligations[1]	$ 19,555	$ 19,555
First-mortgage bonds	—	450,000[2]
Total fixed charges	$ 19,555	$ 469,555
Contingent charges		
First-mortgage bonds	$ 911,250	—
General-mortgage bonds	—	$ 202,500
Capital fund[3]	260,000	260,000
Sinking fund[4]	101,250	82,500
Total contingent charges	$ 1,272,500	$ 545,000
Total annual charges	$ 1,292,055	$ 1,014,555

[1] For purposes of comparison, interest on the amount of equipment obligations which it is expected will be outstanding on January 1, 1946, exclusive of any which may be incurred hereafter and before consummation of the plan, is stated for both plans.

[2] Under the former plan, annual interest on first-mortgage bonds issuable thereunder would be increased $30,000 if income available for fixed charges equals or exceeds $1,250,000 per annum for any 2 consecutive years after consummation of the plan.

[3] Stated at 2 percent of total annual operating revenues of $13,000,000. Amount stated is subject to material decrease because of provision for credit to payments into the fund of depreciation charges for roadway and structures.

[4] The annual sinking-fund payment on the first-mortgage bonds issuable under the modified plan is one-half of 1 percent. Under the former plan, a rate of one-half of one percent applies to the annual sinking-fund payment on first-mortgage bonds issuable thereunder, but payments would not commence until 10 years after the date of their issue. The general mortgage under the former plan, would require annual sinking-fund payments of one-half of 1 percent.

The petition filed by S. A. Lynch, S. A. Lynch Corporation and Joseph van B. Wittmann, requesting that the proceeding be reopened to permit the petitioners to file a new plan of reorganization is denied.

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Second Supplemental Order of the Interstate Commerce Commission Entered January 8, 1945.

SECOND SUPPLEMENTAL ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 8th of January, A. D. 1945.

FINANCE DOCKET No. 13170

FLORIDA EAST COAST RAILWAY COMPANY REORGANIZATION

IT APPEARING, That this Commission, on August 10, 1942, made and filed its supplemental report and entered its supplemental order in this proceeding, 252 I. C. C. 731, approving a plan of reorganization of the Florida East Coast Railway Company, debtor, that plan being a modification of the plan approved by the Commission, division 4, by report and order of April 6, 1942, 252 I. C. C. 423;

IT FURTHER APPEARING, That after a hearing before the court on objections to the plan the court, by order entered October 19, 1943, sustained certain objections to the plan and referred the proceedings back to this Commission for further consideration in light of the facts which have developed since the former hearing before this Commission;

IT FURTHER APPEARING, That a further hearing has been held and this Commission, upon the date hereof, made and filed its report containing its findings of fact and conclusions thereon, which report, together with the previous reports of April 6 and August 10, 1942, is hereby referred to and made a part hereof, in which report of even date herewith it has approved certain modifications in the plan of reorganization of the debtor previously approved by this Commission:

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Commission's Order of January 8, 1945.

IT IS ORDERED, That the following modified plan of reorganization of the debtor be, and it is hereby, approved:

I. Effective Date of the Plan

The effective date of the plan shall be January 1, 1946 and interest on the principal of all allowed claims shall be computed to that date. All of the new securities shall be dated as of the effective date.

II. Reorganized Company

Except as otherwise provided herein, all property and franchises of the debtor shall be retained or conveyed to it or to a new company, as may be determined by the reorganization managers with the approval of the court. As herein used the term "reorganized company" means the debtor as reorganized or the new company thus acquiring the debtor's property, and the term "court", unless otherwise indicated, means the District Court of the United States for the Southern District of Florida.

III. Cash Reserve

The reorganization managers shall set aside in a separate fund out of the debtor's cash on hand a sum of not less than $8,700,000 as a reserve to be expended, as directed by the court, for cash requirements upon reorganization and for the improvements and betterments to the property of the debtor specified in the report of this Commission which is made a part hereof. There shall be credited to such reserve fund, any cash expended for such purposes by the trustees of the estate of the debtor, upon order of the court, and any part of such fund which may not have been so expended or appropriated at the date of consummation of the plan shall be taken over and held as a separate fund by the reorganized company to be expended for such purposes upon order of the board of directors of the reorganized company.

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IV. Cash Distributions

Distributions of cash in the treasury of the debtor, or any appropriations thereof, to the holders of the debtor's first and refunding mortgage bonds, if made pursuant to order entered by the court prior to the effective date of the plan shall be deemed to constitute part satisfaction of the claims of such bondholders additional to the treatment accorded them by the plan approved herein. Any such cash distributions, or any appropriations of such cash, if made pursuant to order of the court entered on or subsequent to the effective date of the plan shall be applied, first, to payment of interest on the new first mortgage series-A bonds accrued since the effective date and second to decrease the total principal amount of new first mortgage series-A bonds otherwise issuable under the plan to holders of the debtor's first and refunding mortgage bonds.

V. New Capitalization

The capitalization of the reorganized company upon consummation of the plan as of its effective date shall consist of approximately the following, the amounts stated being subject to variation under the provisions of Section IV hereof and to the extent, if any, that any equipment obligations are paid or reduced or additional equipment obligations are incurred:

Issue	Amount
Equipment trust 3% certificates, series I	$ 496,000
Equipment trust 2¾% certificates, series J	170,000
First-mortgage 4½% income bonds, series A, due 75 years after date of issue	20,250,000
Common stock, no-par value (at $100 per share)	20,250,000
Total	$41,166,000

Upon consummation of the plan and the issue and distribution of cash and new securities as herein provided, the existing mortgage bonds shall be surrendered to the reorganization managers and canceled, and the respective mortgages shall be released of record and canceled.

VI. Undisturbed Securities

The reorganized company shall assume all outstanding equipment obligations of the debtor and of the debtor's trustees. The interests of the holders of claims evidenced by all such equipment obligations are found not to be materially and adversely affected by the plan.

VII. First Mortgage Bonds

The new first mortgage shall constitute a direct first lien subject only to the liens upon equipment, on all the properties and assets of every kind owned by the reorganized company upon consummation of the plan, including without limitation, securities, free equipment and the reorganized company's equity in such equipment as is subject to equipment obligations, except, however, such cash accounts receivable or other current assets which are not customarily subject to the lien of the first mortgage and such property or assets not necessary for the operation of a railroad as may be provided in the mortgage; and shall also constitute a first lien, in such manner and with such exceptions as the mortgage may provide, upon all property of whatever nature acquired by the reorganized company or its successors or assigns after the effectuation of the plan, subject only to such encumbrances or purchase money liens as may exist or be created at the time of acquisition.

The principal amount of the bonds to be issued under the first mortgage shall be unlimited, subject to mortgage provisions and to such limitations, if any, as may be prescribed by the laws of the State or States in which the reorganized company shall be incorporated.

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First-mortgage bonds may be issued from time to time in different series, subject to such limitations and restrictions as may be specified in the first mortgage, and to such conditions as may at the time or times of issue be imposed by this Commission or other analogus authority pursuant to provisions of the law, but with respect to the lien of the first mortgage all bonds of every series shall be equally secured.

First-mortgage series-A bonds in a principal amount not exceeding $20,250,000 shall be authenticated and delivered in the reorganization ratably to holders of the now outstanding first and refunding mortgage 5-percent bonds of the debtor. The series-A bonds shall be dated January 1, 1946, mature 75 years after date, bear contingent interest at the rate of 4½ per cent per annum, due and payable as hereinafter provided, and shall be redeemable in whole or in part at the option of the reorganized company, except for the purposes of the sinking fund (hereinafter described), on May 1 in any year on 30 days' notice at their principal amount and accrued interest including interest from January 1 to redemption date of the year in which redeemed, plus a premium on such principal amount as follows: 5 percent of their principal amount if redeemed on or before January 1, 1961, 4 percent if redeemed after January 1, 1961 and on or before January 1, 1976, 3 percent if redeemed after January 1, 1976 and on or before January 1, 1991, 2 percent if redeemed after January 1, 1991 and on or before January 1, 2006, 1 percent if redeemed after January 1, 2006, and on or before January 1, 2016, and thereafter at the principal amount thereof.

Contingent interest on series-A bonds at the rate of 4½ percent per annum shall (up to the limits of accumulation hereinafter described) become due as a debt on December 31 in each year if, or to the extent that, such interest is earned and income is available therefor under the provisions hereinafter described for determination and application of

available net income, except that interest at the rate of 4½ percent for the year 2020 shall be paid January 1, 2021, whether or not earned. Otherwise, interest, if so earned and available, shall be payable on May 1 of the next succeeding year or thereafter, as provided below. Unpaid interest shall accumulate up to the maximum amount of 45 percent but no more. If such maximum accumulation is reached, no further accumulation shall be made unless the amount of the accumulated interest is later reduced, in which case unpaid interest accruing after such reduction in accumulated interest may again be accumulated from time to time, but the total accumulation shall never exceed a maximum of 45 percent.

Accumulated interest shall be mandatorily payable on May 1 of any subsequent year (a) whenever and to the extent that there is available net income for the preceding calendar year remaining after the prior deductions made pursuant to the provisions hereinafter described for determination and application of available net income, or (b) in any event (whether earned or not) at the maturity or on redemption of the income bonds. Payment of interest in any year on the series A bonds shall be considered as applied to interest accrued for the last preceding calendar year before being applied to accumulations. The board of directors of the reorganized company at any time in its discretion may pay out of any funds lawfully available therefor, any interest due or accrued on the series-A bonds, even if not earned.

No interest shall be paid on the series-A or other income bonds in any year if the amount would be less than one-fourth of 1 percent, and all payments shall be in multiples of one-fourth of 1 percent. Any excess available for interest but not paid because of the foregoing provision, shall be reserved and added to the income applicable to interest on bonds issued under the mortgage for succeeding calendar year or years. If there shall be outstanding first mortgage bonds of different series bearing contingent interest, the

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mount applicable to interest on such bonds shall be distributed among the respective series in proportion of the unpaid interest at the time accumulated on the bonds of such series respectively.

The first mortgage shall provide for a sinking fund for series-A bonds, the annual payments to be made on May 1, beginning May 1, 1947, and to be equal to one-half of 1 percent of the largest principal amount of series-A bonds at any time previously authenticated and delivered, if sufficient available net income for the previous year is available for such purpose after the deductions made pursuant to the provisions of the subdivision hereinafter included in this plan and entitled "Determination and application of available net income". Such sinking fund shall be applied to the retirement of series-A bonds by purchase in the open market or by call for tender (but in no case at a price exceeding their redemption price) and to the extent not so applied to the redemption of bonds, as hereinafter provided. Bonds shall be called for redemption by lot. All series-A bonds acquired for the fund shall be retained in the sinking fund and interest paid thereon to the same extent as if the bonds were outstanding, such payments of interest into the sinking fund on such bonds to be additional to the regular sinking fund payments. For the purposes of the sinking fund, series-A bonds shall be redeemable at any time on 30 days' notice at their principal amount and accrued interest plus a premium on such principal amount as follows: 2½ percent of their principal amount if redeemed on or before January 1, 1961, 2 percent if redeemed after January 1, 1961 and on or before January 1, 1976, 1½ percent if redeemed after January 1, 1976 and on or before January 1, 1991, 1 percent if redeemed after January 1, 1991 and on or before January 1, 2006, one-half of 1 percent if redeemed after January 1, 2006 and on or before January 1, 2016, and thereafter at the principal amount thereof. The reorganized company shall be permitted to deliver to the mortgage trustee in lieu of all or any part of cash

payments into the sinking fund, bonds retirable out of the fund, bearing all unmatured coupons, such bonds to be taken at their cost to the company (exclusive of accrued interest), as certified by the company to the trustee at the time of delivery of such bonds or at the redemption price on the first day of May in such calendar year, whichever may be lower.

Additional first mortgage bonds, other than series-A, may be issued from time to time in different series subject to limitations and restrictions to be specified in the mortgage. Such additional bonds shall be payable on such date or dates, shall be issued in such denominations, shall bear interest either fixed or contingent at such rates, and shall contain such provisions in regard to redemption, conversion, taxes, place or places and money or moneys of payment, registration and sinking funds and shall have such other characteristics as may be prescribed by the board of directors of the reorganized company at the time of issue, subject to authorization or approval by this Commission or such other governmental body as may, at the time, have jurisdiction in the premises; *provided,* that no additional bonds shall be issued bearing fixed interest (except "emergency bonds" hereinafter described) without the prior approval of two-thirds of those holders of series-A bonds who are present in person or by proxy at a meeting called by the trustee of the first mortgage for such purpose, each $100, principal amount, of bonds there represented being entitled to one vote, and *provided, further,* that emergency bonds (hereinafter provided for) may be issued without such prior approval of the holders of series-A first-mortgage bonds.

Additional bonds may be authenticated from time to time by the reorganized company to provide for, or to reimburse the reorganized company for, not exceeding 75 percent of the net expenditures for additions to, or extensions or improvements of, the property of the reorganized company made after the effective date of the plan, which under

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the Commission's accounting rules or those of other public regulatory authority having jurisdiction in the premises at the time in force, are properly chargeable to capital account; *provided, however,* that if any additional first-mortgage bonds shall be issued to provide for, or to reimburse the the treasury of the reorganized company for, moneys expended for the acquisition of railroad equipment, a sinking fund shall be established, in addition to any other sinking fund which may be provided for such bonds, payable in equal annual installments in an amount sufficient to retire at par, within the expected efficient service life of such equipment, in no case to exceed 15 years, the principal amount of first-mortgage bonds equal to the principal amount of bonds so issued; and *provided, further,* that no bonds shall be issued in respect of expenditures for improvements or additions and betterments for which cash for payment thereof is included in the cash fund of not less than $8,700,000, specified in the foregoing section III of this plan.

No bonds issued under the first mortgage shall be pledged if as the result of such pledge the aggregate principal amount of all first-mortgage bonds then under pledge in excess of the principal amount of all loans so secured, will exceed 10 percent of the total principal amount of all first-mortgage bonds then authenticated and uncanceled, other than bonds held in the sinking fund.

The first mortgage shall contain a provision for the right to authenticate and deliver "emergency bonds", bearing either fixed or contingent interest, free from the restrictions hereinbefore set forth, provided that such authentication and delivery is authorized by a resolution of two-thirds of the board of directors to the effect that funds are needed and can not be obtained except upon sale, exchange or pledge of the bonds applied for. Any such emergency bonds not retired within two years from the date of authentication and delivery shall be retired by means of an annual sinking fund equal to 5 percent of the

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amount of such bonds issued and the principal amount of such emergency bonds outstanding shall not exceed at any one time either $1,000,000 or 2 years' fixed charges of the reorganized company, as that term is used in this Commission's Uniform System of Accounts for Steam Railroads, whichever sum shall be the greater. If and when emergency bonds so authenticated and delivered are retired, they shall be returned by the reorganized company to the trustee under the first mortgage and canceled, and no bonds shall be authenticated and delivered to refund the bonds so canceled. After such cancelation, but not before, the bonds so canceled shall be deemed never to have been authenticated and delivered for the purpose of determining the right of the reorganized company to the authentication and delivery of emergency bonds or other bonds or withdrawal of deposited cash under the provisions of the first mortgage.

Additional limitations or restrictions on the issuance of first-mortgage bonds may be made by a supplemental indenture.

The first mortgage shall contain provisions giving to the holders of 66⅔ percent in aggregate principal amount of outstanding bonds to be affected by the business to be submitted to the meeting, the power by resolution at a bondholders' meeting to take the various actions therein specified including the power to make any modification in or addition to the provisions of the first mortgage, or the rights and obligations of the reorganized company or the rights of the holders of the bonds of all or any series, provided that the bondholders shall have no power to (a) extend the maturity of any bonds, or reduce the rate of interest thereon, or otherwise modify the terms of payment of principal (other than a modification of the provisions of any sinking fund or redemption provisions of bonds) or interest, without the consent of the holder of each bond so affected, or (b) effect a reduction of the percentage required for any action authorized to be taken by the bond-

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holders, provided that application of the provisions of this paragraph shall be conditioned upon approval by this Commission of any proposed change of the sinking fund provisions, or any other provision of the first mortgage, incorporated therein pursuant to the requirements of this plan. In case any series of bonds is affected differently from any other series by the action proposed, the vote of holders of 66⅔ percent in aggregate principal amount of each such series so differently affected shall also be required. Provision shall be made whereby bondholders may vote at such meeting by proxy. Notwithstanding the limitation in clause (a) of this paragraph the first mortgage shall contain a provision in such form and substance as may be determined by the reorganization managers with the approval of the court, that the mortgage may at any time, with the approval of this Commission or of such other regulatory body as may at the time have jurisdiction in the premises, be modified by the concurrent action of the reorganized company and of the holders of not less than 75 percent in principal amount of all bonds of the mortgage outstanding at the time of such vote so as to postpone the time or times of payment of any fixed interest or accumulations of contingent interest, either before or after the interest is due, or the principal of any or all series of bonds of the mortgage, either before or after maturity, whether bearing fixed or contingent interest which at such time may be outstanding, provided that the payment of the principal of the bonds may not be postponed for a longer period than 20 years from the maturity date designated in the bonds and that the maturity of interest on the bonds may not be postponed for a longer period than 5 years, but in no event beyond the maturity date of the principal of the bonds designated in the bonds unless such maturity be postponed, in which event the maturity of interest on the bonds may not be postponed beyond the extended maturity date of the principal.

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VIII. Capital Fund

There shall be created by appropriate covenants in the first mortgage of the reorganized company a capital fund which shall be segregated from other funds.

The net income available for payments for each income period into the capital fund beginning with the calendar year during which the plan shall be consummated, shall be determined as provided hereinafter in the section hereof entitled "Determination and application of available net income" and shall amount to 2 percent of total railway operating revenues for each such period.

The appropriation for the capital fund shall be reduced by the amount of any charges for depreciation of roadway and structures made in each income period, less the cost of replacement of depreciable roadway and structures property during each period, including any costs represented by credits to account 716, material and supplies on account of such replacements, and shall be increased by the amount, if any, by which available net income for the last preceding period shall have been less than the amount required for the capital fund as aforesaid, *provided, however,* that

(a) the capital fund may be applied as shall be from time to time determined by the board of directors of the reorganized company, either to provide for or to reimburse the treasury of the reorganized company for all or any part of the net charges to the investment account (as defined under this Commission's classification of income, profit and loss, and general balance sheet accounts for steam roads, accounts Nos. 701, Capital investment in road and equipment, 702, Improvement on leased railway property, and 705, Miscellaneous physical property) of the reorganized company not otherwise financed, or not otherwise provided for, with proper adjustment for use by the reorganized company of second-

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hand material, donations and other items not involving a cash outlay, or the equivalent thereof.

(b) to the extent that expenditures are so provided for or reimbursed out of the capital fund, the reorganized compnay shall not thereafter have the right to issue any bonds or other evidences of indebtedness or withdraw deposited cash, to capitalize or reimburse such expenditures, *provided, however,* that such expenditures (if for purposes for which first mortgage bonds may be issued) may, within such limits, if any, as may be specified in the first mortgage be used to supply, in whole or in part, the excess of capital expenditures required to be certified under such mortgage over the principal amount of the bonds that may be issued or the amount of deposited cash that may be withdrawn under the terms thereof; and

(c) any amount which is available for, or set aside in the capital fund under the foregoing provisions and which in the opinion of the board of directors of the reorganized company is not necessary for the foregoing purposes, may be used, in addition to the uses hereinbefore allowed, to retire first mortgage bonds, to pay any debt at the maturity thereof, or to pay any accumulations of interest on first mortgage bonds, but any amount so available which is not expended, or appropriated to meet liabilities incurred before the end of the year in respect of which it shall have been set aside or within three months thereafter, may be accumulated up to $300,000, but any amount in excess of such accumulation shall not be carried forward. If any sums set aside into the capital fund are used to pay any contingent interest charges, no dividends shall be paid on the stock of the reorganized company until the

capital fund has been reimbursed for the funds so used.

IX. Determination and Application of Available Net Income

Available net income shall be determined for each calendar year, (except that the first period may be less than a calendar year in the event the plan shall be consummated on some date other than January 1), on or before May 1 of the following year, beginning with the calendar year in which the plan shall be consummated.

The period for which such available net income shall be determined is herein designated as the income period.

Available net income for each such income period shall be determined by deducting all fixed charges of the reorganized company accruing during such income period from the income of the reorganized company available for fixed charges for such income period (determined in accordance with this Commission's accounting rules or those of any other governmental agency having jurisdiction in the premises at the time in effect, or, to the extent not governed by such accounting rules, in accordance with sound accounting practices).

Available net income shall be determined for each such period as the accounts are stated on the books of the reorganized company when its accounts are closed for such period, without adjustments, except that (1) if in respect of any period the available net income is a deficit, the amount of such deficit shall be carried forward and be deducted in determining available net income for the succeeding period or periods until such deficit (or accumulated or remaining deficits) be extinguished by earnings, which, in the absence of such deficit or deficits, would be available net income; and (2) any adjustments necessary to correct the income accounts of any prior period shall be made by appropriate entries which may either be made in the accounts

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of the current period, or, in the discretion of the board of directors of the reorganized company and subject to the approval of this Commission or that of such other governmental agency, if any, as at the time may have jurisdiction over the accounting practices of the reorganized company, may be made, in whole or in part, in the accounts of any subsequent period or perods, and any such debits or credits made in the accounts of any period to adjust entries in the income account of prior periods shall be treated as income items for the period in which entered on the books, whether cleared through income or profit and loss accounts; and (3) in computing such available net income no amounts shall be deducted for retirements of nondepreciable property.

Available net income for each income period shall be applied to the following purposes and in the following order:

(a) To the extinguishment of any deficit or deficits in available net income of the reorganized company for prior income periods.

(b) To the payment of any sinking-fund payments which may be established for retirement of any first-mortgage bonds issued for the acquisition of railroad equipment.

(c) To the payment of the annual installment required for the capital fund and any accumulation thereof, as hereinabove provided.

(d) To the payment of currently payable interest on first-mortgage contingent-interest bonds.

(e) To the payment of current sinking fund requirements and accumulations thereof on series-A first-mortgage contingent interest bonds.

(f) To the payment of accumulations of interest on contingent interest first-mortgage bonds.

(g) To dividends on stock or to any proper corporate purposes as the board of directors of the reorganized company may determine.

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If any sinking fund, other than for retirement of first mortgage bonds issued to acquire railroad equipment, shall be provided for any future issue of first mortgage bonds of other series than the series-A bonds to be issued in the reorganization, annual payments into such fund shall have such precedence in the application of available net income as the board of directors of the reorganized company may then determine.

In case of any unification of the properties of the reorganized company with the properties of any other company as a result of which it becomes desirable to combine the earnings of such properties and eliminate separate accounts, income available for fixed charges for the purpose of computing available net income applicable to interest or sinking fund for the income bonds for any succeeding fiscal year shall be determined in any manner approved by holders of income bonds as follows: (a) upon the vote or written consent of the holders of 75 percent of the principal amount of income bonds outstanding at the time, or (b) if a meeting shall be held upon at least 3 weeks' notice and if at such meeting the holders of less than 75 percent of the principal amount of income bonds outstanding at the time shall be present in person or by proxy, and if such meeting shall be adjourned for at least three weeks, and if at such adjourned meeting there shall again be less than the holders of 75 percent of the principal amount of income bonds present in person or by proxy, and if such meeting shall again be adjourned for at least 3 weeks, then at such second adjournment the vote of 75 percent of the principal amount of the income bonds present in person or by proxy at the meeting shall constitute the approval of the holders of the income bonds for the purposes of this paragraph.

X. Capital Stock

There shall be authorized and issued 202,500 shares of common capital stock of the reorganized company without

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ar value which shall be issued in the reorganization pro ata to the holders of the first and refunding mortgage onds of the debtor. Holders of such stock shall be entitled o one vote per share on all matters. Upon the termination f the voting trust provided for in the following section XI f this order, each shareholder shall have the right of umulative voting in the election of directors.

XI. Voting Trust

A voting trust to continue for 5 years from the date f consummation of the plan, shall be created into which hall be deposited all the shares of stock issued in the eorganization and all other voting stock thereafter issued y the reorganized company during the continuance of the oting trust. Voting trust certificates shall be issued there- or. All references in the plan to stock of the new com- any shall, unless the context otherwise requires, be deemed o include voting trust certificates for the same.

The voting trustees shall be three in number, all to e approved by the court, two to be designated by the St. oe Paper Company or any successor thereof and one by he court to represent the minority interests, the latter rustee to have the power of election of one-third of the otal number of directors of the reorganized company or, f the total is not evenly divisible by three, then the number f directors nearest to one-third of the total number. Any uccessor to the trustee designated by the court to fill a acancy occurring subsequent to the termination of the urisdiction of the court in the present proceedings shall be lesignated by a judge of the United States District Court or the Southern District of Florida and any successor to he voting trustee designated by the St. Joe Paper Com- any shall be designated by that company or by any suc- essor holding all, or substantially all, of the stock ex- hanged under the plan for the present interest of the St. oe Paper Company in the debtor.

The directors elected by the voting trustee appointed by the court shall have the right of appointment of one member of any finance and executive committee of the board of directors, which may be created by the board.

The voting trustees shall have power upon the affirmative vote of a majority in number of shares of owners of common stock of the reorganized company represented by voting trust certificates outstanding at the time, to sell all or any part of the trusteed stock and in connection with any such sale, to reclassify or alter the trusteed stock on such terms as they may determine.

The sale of the stock may be made at any time within the life of the trust for such consideration as the trustees deem expedient (as a part of which consideration they may take into account any agreements which the purchaser or purchasers may make by way of traffic agreements, guaranties, offers of exchange of securities or otherwise, which in the judgment of the trustees will be of value to the reorganized company or its creditors or stockholders).

For the purpose of determining whether a majority in number of shares of owners of the trusteed stock has consented, the trustees may disregard trust certificates as to which, at the time of voting, the trustees know or have information affording a reasonable basis for believing that such trust certificates are owned or controlled by a railroad or by two or more railroads acting jointly.

The terms of any such sale and of the alteration or reclassification of the common stock of the reorganized company as aforesaid shall be subject to the approval of this Commission.

In the event of a sale of stock by the voting trustees as aforesaid, the proceeds of and the balance of the trusteed stock or reclassified stock allocable thereto pursuant to the terms of the sale approved in the manner above provided shall be distributed pro rata to the holders of trust certificates against surrender of the certificates.

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In the event that the sale of trusteed stock as above provided shall be effected within the life of the voting trust, such trust shall then be terminated and the remaining trusteed stock of each class shall then be distributed pro rata to the holders of trust certificates against the surrender thereof.

Except as above provided, the trustees shall have full voting power with respect to all stock in the trust and any dividends received upon trusteed stock shall be distributed to the holders of trust certificates as of the record date of such dividends.

The reasonable fees and expenses of the trustees, including counsel fees, shall be paid by the reorganized company.

XII. Treatment of Existing Securities and Claims

Upon consummation of the plan or prior thereto if the court shall order, holders of the debtor's first-mortgage 4½-percent bonds, due June 1, 1959, shall receive for each $1,000, principal amount, of bonds held, cash in the full principal amount plus all accrued and unpaid interest to date of payment of the principal.

Holders of the debtor's first and refunding mortgage 5-percent bonds, series-A, shall receive for each $1,000, principal amount, of bonds held and all accrued and unpaid interest to January 1, 1946, $450, principal amount, of new first-mortgage 4½-percent income bonds and 4.5 shares of new no-par value common capital stock.

The interests or equities of (1) holders of unsecured claims against the debtor not entitled to priority over one or more of the mortgages of the debtor and (2) holders of the capital stock of the debtor, have no value and nothing shall be distributed to them in the reorganization.

The debtor as reorganized, or the transferee of the property of the debtor, in connection with any settlements of transportation accounts between the United States and the debtor or the reorganized company, shall be required

to recognize and pay or allow for any and all sums determined through audit, adjustment, compromise, or litigation, as due the United States by virtue of the provisions of section 322 of the Transportation Act of 1940, 54 Stat. 955, for overpayments made prior to the date of confirmation of a plan of reorganization, without requiring proof thereof in this reorganization proceeding and without prejudice by reason of such sums not having been proved herein, with the same relative priority as they now have with respect to other obligations of the debtor.

XIII. Claims Not Affected by Plan

The following claims to the extent allowed are not affected by the plan: (a) Claims arising from the administration of the trust estate and operation of the property subsequent to the filing of the petition under section 77, of the Bankruptcy Act, as amended, on January 25, 1941; (b) obligations of the receivers incurred in the receivership proceeding between the time of appointment of the receivers on August 31, 1931 and the filing on January 25, 1941 of the petition under section 77 of the Bankruptcy Act, as amended, and reasonable administrative expenses, and allowances in that proceeding, to the extent that provision shall be made therefor by the court in the present proceedings; (c) claims entitled to priority over one or more of the mortgages of the debtor, including labor claims entitled to such priority; (d) claims for taxes and special assessments; (e) claims for interest and principal, provision for payment of which has been made by the debtor or by the court, but which have not been paid because not presented for payment. To the extent that such claims, liabilities, or obligations are not paid by the debtor or the trustees of the estate of the debtor pursuant to order of the court in the reorganization proceeding, they shall be assumed by the reorganized company and paid in cash in due course, provided that any amounts of the foregoing

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classes (a) to (e), inclusive, assumed by the reorganized company shall constitute a charge upon the reorganized company prior in lien to all new securities issued under the new first mortgage. All such claims, liabilities, and obligations may be adjusted or compromised and dealt with or paid or discharged by the reorganized company, all as may be determined by the board of directors of the reorganized company subject to approval by the court. In view of the above provisions, the interests of the holders of such claims of the foregoing classes (a) to (e), inclusive, against the debtor will not be materially and adversely affected by the plan.

XIV. Expenses of Reorganization

All costs of administration of the trustees and all expenses of reorganization, including the amounts of all claims for compensation and expenses allowed pursuant to section 77 of the Bankruptcy Act, shall be paid in cash.

XV. Assumption or Disaffirmance of Leases or Contracts

The reorganized company shall assume such of the contracts of the debtor which are executory in whole or in part, including any executory leases and liabilities under guaranties, as shall have been affirmed by the trustees of the estate of the debtor in the reorganization proceeding with the approval of the court, and also any executory contracts made by the trustees of the estate of the debtor with the approval of the court in the reorganization proceeding which, by their terms, do not terminate at the conclusion of the reorganization proceeding. When such contracts are assumed by the reorganized company, the interests of the other parties to such contracts will not be materially and adversely affected by the plan.

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XVI. Reorganization Managers

The reorganization managers shall be three in number, all to be approved by the court, and shall carry out the plan under the supervision and control of the court. One shall be designated by the St. Joe Paper Company, one by the court and the third also by the court (or in such manner as the court may determine) to represent the minority holders of the debtor's now outstanding first and refunding mortgage bonds. The reorganization managers shall have general supervision of the carrying out of the plan.

If the St. Joe Paper Company shall fail to designate a reorganization manager within such time as the court shall consider reasonable, the court shall appoint such manager.

The reorganization managers shall have, subject to any requirements of law and requisite approval of the court and this Commission, full and plenary discretionary power to take all such action and to enter into such arrangements, financial and otherwise, as they may deem necessary or advisable, in order to consummate and carry into execution the plan or any modification thereof; to fix the conpensation of persons whose services they may employ in the execution of their powers; to incorporate the reorganized company if they decide to form a new corporation; to supervise the transfer of any properties to the reorganized company and to make agreements and commitments for its account, subject to its confirmation; to determine the form and provisions, so far as not otherwise herein specifically provided, of the certificate of incorporation of the reorganized company if a new corporation is to be formed, and its by-laws, (or to effect the necessary amendments to the certificate of incorporation of the existing Florida East Coast Railway Company and its by-laws), the new bonds and the mortgage under which the same shall be issued, the stock certificates and any other instruments deemed by the reorganization managers to be necessary or proper in con-

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nection with the plan; and to do all other acts in their discretion advisable for carrying out the plan.

The court shall, however, before they are put in use, approve the articles of incorporation, amendments to articles of incorporation, by-laws, mortgage, trust agreements, bonds, securities, and stock certificates.

The reorganization managers may act by a majority as from time to time constituted, at a meeting or in writing without a meeting. They may employ such agents, attorneys, and others as they may deem desirable for the purposes of the plan. The reorganization managers may from time to time delegate to others any power or discretion conferred upon them by the plan; and the managers shall not be liable for any action taken or omitted by them in good faith or by any person employed by them in good faith, except for their respective individual malfeasance or willful neglect.

The reorganization managers shall not be authorized to solicit deposits of securities for purposes other than exchange or to solicit authorizations to represent security holders, except upon approval by this Commission of the terms of such solicitation, pursuant to section 77 (p) of the Bankruptcy Act.

XVII. Acceptance of the Plan, Participation Therein and Execution Thereof

Acceptance of the plan shall include acceptance of the new bonds, mortgage, stock certificates, and all instruments necessary and appropriate to the carrying out of the plan, other than the orders of the court and this Commission, to the same effect as though the terms of such instruments were set out in full herein.

The method by which creditors and other parties in interest may, after confirmation of the plan by the court, participate therein shall be determined by the reorganization managers and notice thereof duly given.

If so ordered by the court, the plan, after finding by the court that it is fair and equitable, may be executed by a sale at public auction, at not less than a fair upset price as determined by the court, of all or any part of the properties and assets of the debtor, free from all liens or claims, other than those herein expressly stated not to be affected by the plan. Upon any such sale, the properties and assets offered for sale may be purchased for the benefit of the reorganized company by the reorganization managers, or by a purchaser nominated by the reorganization managers, and in that event there shall be applied on account of purchase price the distributive share, if any, of the proceeds of such sale of all securities the holders of which shall have assented to the plan, and the securities, though not assenting to the plan, of all classes which shall be bound by the plan in accordance with the provisions of section 77 of the Bankruptcy Act, as amended. The reorganized managers or their representative may bid, at any such sale, such amounts as the reorganization managers may determine.

All properties and assets so sold which are purchased by the reorganization managers or their representative shall be transferred to the reorganized company.

In the event of any such sale, the reorganization managers may in their discretion sell all or any portion of the new securities distributable under the plan in respect of the securities of any creditor, if neither such creditor nor the class to which such creditor belongs shall be bound by the plan in accordance with the provisions of section 77 of the Bankruptcy Act, as amended. The reorganization managers may in their discretion allot to nonassenting creditors of any class which shall not have accepted the plan, upon the request of such creditors, the securities allocated to them under the plan, in lieu of their aliquot share of the proceeds of the sale of the properties. The proceeds of any such sale of securities, and, with the approval of the court, any other funds which, in the judgment of the reorganiza-

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tion managers, are available among the assets of the debtor estate or of the reorganized company, may be used to pay the portion the purchase price of property acquired payable in cash on any such sale.

Upon any such sale, nonassenting creditors of any class which shall not be bound by the plan in accordance with the provisions of section 77 of the Bankruptcy Act, as amended, and/or the stockholders, shall be entitled to receive, in lieu of the securities, if any, otherwise issuable under the plan, their equitable proportion of the proceeds of such sale after deducting therefrom all expenses of such sale and the amount which would be required to pay in full, of principal and unpaid interest accrued to the date of such sale, all creditors whose claims equitably marshalled are prior in lien or superior in equity to the claims of such nonassenting creditors or the rights of such stockholders.

In the event of any such sale, the plan shall not otherwise be carried out unless the reorganization managers or their representative shall be the successful bidder for substantially all the properties and assets offered for sale.

XVIII. Board of Directors

The board of directors of the reorganized company shall consist of not less than 11 nor more than 17 members who shall consist initially of such persons as may be designated by the reorganization managers with the approval of the court.

The by-laws of the reorganized company shall provide that the board of directors shall be divided into three approximately equal classes whose terms of office shall respectively expire at different times. The first class shall consist of directors whose terms of office shall expire in the year following the year in which the plan is consummated. The second class shall consist of directors whose terms of office shall expire in the second year following the year in which the plan is consummated; and the third class shall

consist of directors whose terms of office shall expire in the third year following the year in which the plan is consummated.

XIX. Notice and Construction of Plan

Unless otherwise provided in section 77 of the Bankruptcy Act, as amended, or any order or orders of the court in the reorganization proceeding or of this Commission, whenever notice shall be required or permitted to be given under or pursuant to the plan, such notice shall be given by publishing a copy thereof once in each week for two successive weeks in one newspaper published and of general circulation in the City of Jacksonville, State of Florida, and in one newspaper published and of general circulation in the City of Miami, State of Florida, and also (1) in case of notice to security holders who have accepted the plan, by mailing such notice postage prepaid, to the addresses of such security holders set forth in the acceptances signed by them, and (2) in case of notices to security holders who shall not have accepted the plan, by mailing such notice, postage prepaid, to such security holders whose names and addresses are available, but failure to mail any such notices, or delay in mailing any such notices, shall not invalidate the notice by publication above provided, which alone shall be sufficient.

The construction of the plan by the court shall be final and conclusive. The court shall have the power to cure any defect, supply any omission, or reconcile any inconsistency, in such manner or to such extent as may be necessary or expedient in order to carry out the plan effectively.

The carrying out of the plan shall be as provided in the Bankruptcy Act.

XX. Taxes Due the United States

The debtor, as reorganized, or the transferee of the property, will assume the liability for, and will pay in full in due course any and all taxes due to the United States

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from the debtor or the trustees for any taxable period prior to the date of confirmation of a plan of reorganization, without requiring proof thereof in this proceeding and without prejudice by reason of not having been proved herein, subject, however, to the statutes of limitation normally applicable to the assessment and collection of such taxes, provided, however, that the liability of the reorganized company for any taxes which are the subject of litigation on the date of the confirmation of the plan of reorganization, or which may become the subject of litigation on any date thereafter and prior to the expiration of the applicable statute of limitation, shall be determined pursuant to law, and provided, further, however, that this provision shall not be deemed to preclude either the debtor, the trustee, or the reorganized company from contesting the merits of any such tax in the manner provided by law.

IT IS FURTHER ORDERED, That the authorization and approval herein granted by this Commission are upon the condition that the journal entries covering the necessary accounting adjustments under the order will be submitted to this Commission for approval before they are recorded on the books of the reorganized company under the plan of reorganization herein approved.

IT IS FURTHER ORDERED, That nothing herein contained shall be, or be construed as, a grant of authority for the issue of any securities, assumption of obligations, transfer of any property, sale, consolidation, or merger of the debtor's properties, or pooling of traffic, pursuant to either the Bankruptcy Act or the Interstate Commerce Act, until further action by this Commission upon confirmation of the plan by the court.

IT IS FURTHER ORDERED, That except as otherwise decided in the aforesaid reports, all petitions for modification of the reports and orders of April 6, 1942 and August 10, 1942, and all petitions heretofore made or filed in this proceeding

for reopening the proceeding or for other relief, be, and they are hereby denied.

IT IS FURTHER ORDERED, That the orders entered herein on April 6, 1942 and August 10. 1942, be, and they are hereby, revoked and superseded.

By the Commission.

W. P. BARTEL,
Secretary.

(SEAL)

Third Supplemental Report Proposed By Ralph H. Jewell, Examiner, and Accompanying Summary.

INTERSTATE COMMERCE COMMISSION

Washington

FINANCE DOCKET No. 13170

FLORIDA EAST COAST RAILWAY COMPANY REORGANIZATION

SUMMARY OF PROPOSED THIRD SUPPLEMENTAL REPORT

Upon consideration of the plan of reorganization filed by the Atlantic Coast Line for a reorganization of the Florida East Coast Railway Company and the petitions filed by other parties for modification of the plan of reorganization in the above-proceeding approved January 8, 1945, and also

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upon consideration of the entire record of the proceeding as supplemented at the reopened hearings held in November 1945, and the briefs subsequently filed, the following principal determinations are recommended in the accompanying proposed report:

(a) The plan filed by the Atlantic Coast Line should not be approved.

(b) The previously approved provision fixing the effective date as January 1, 1946, should be modified so as to provide that the effective date shall be left to determination by the reorganization managers, provided, however, that it should be approximately the date of consummation of the plan and in no event earlier than 6 months prior thereto.

(c) The cash reserve of $8,700,000 for rehabilitation and improvements should be decreased to $8,125,551 and an addittional separate contingent cash reserve of $3,438,370 established to provide for payment of additional liability for Federal income taxes for the years 1942-5 in case the debtor's accruals of penalty interest on its first and refunding bonds for those years is disallowed, such fund to be distributed *pro rata* to first and refunding bondholders to the extent not necessary for this purpose.

(d) The provisions of the plan with respect to cash distributions should be modified so as to provide that any distributions pursuant to orders of the court entered prior to the date of the order of the court directing consummation of the plan, of cash not reserved and which the court finds was earned prior to the effective date of the plan, and is not reasonably necessary for financing the reorganized company's operations and for paying the charges accruing under the plan on its obligations after the effective date, shall be deemed to constitute part satisfaction of the claims of the first and refunding bondholders, additional to the

treatment accorded them by the plan. The plan should contain no provision for distribution by the court of any cash earned subsequent to the effective date.

(e) Provisions of the plan with respect to the method of computing available net income should be modified to provide that to the extent that there are charges to operating expenses on account of the rehabilitation and improvement program which charges are approved by our Bureau of Accounts as not representing items properly chargeable to Account 702½A "Acquisition Adjustments", such charges shall be eliminated in computing available net income.

(f) Provisions should be made in the plan for the authorization of an amount of 5-percent preferred stock equal to the amount of the first-mortgage bonds to be issued in the reorganization with the option to the holders of first and refunding bonds at the time of reorganization to receive such stock at the rate of one share for each $100 of principal amount of first-mortgage bonds to which they otherwise would be entitled under the plan; and for the conversion of first-mortgage bonds except bonds held in the sinking fund, into preferred stock, at any time prior to call for redemption of the bonds.

(g) No change should be made in the approved capitalization, other than indicated above, and the capitalization approved should be as follows:

Equipment obligations	$ 2,615,866
First-mortgage 4½-percent bonds..	20,250,000(a)
No-par common stock (at $100 per share)	20,250,000
	$43,115,866

(a) Subject to being reduced by election of first and refunding bondholders to receive new 5-percent preferred stock.

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(a) Subject to being reduced by election of first and refunding bondholders to receive new 5-percent preferred stock.

(h) No change should be made in the approved distribution of the reorganization securities. Equipment obligations should remain undisturbed. The first-mortgage bondholders should be paid in full in cash. Holders of first and refunding bonds should receive for each $1,000 bond and unpaid interest thereon to the effective date of the plan, $450 principal amount of new first-mortgage series A 4½-percent income bonds and four and one-half shares of new no-par common stock. The unsecured creditors and the stockholders should not participate in the plan, but alternative provisions for participation by the unsecured creditors should be included in the plan; as stated in the proposed report in the event the court shall determine, contrary to the finding recommended in the proposed report, that there are assets of the debtor of substantial value not subject to the liens of the debtor's existing mortgages.

(i) The provisions for payment of a premium in the redemption of the new first-mortgage bonds should be eliminated.

(j) The text of the plan should be modified so as clearly to permit the issue of fixed-interest-bearing first-mortgage bonds to refund series A bonds outstanding, without the permission of holders of outstanding series A bonds.

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET No. 13170

FLORIDA EAST COAST RAILWAY COMPANY REORGANIZATION

Submitted

Decided

Upon further hearing, further modification of the plan of reorganization for the Florida East Coast Railway Company pursuant to section 77 of the Bankruptcy Act, as amended, recommended.[1]

Appearances as in prior reports and also EDWARD W. BOURNE, ANDREW OLIVER, G. L. REEVES, HOWARD P. MACFARLANE, LEROY B. GILES, J. R. BUSSEY, JAMES C. KNIGHT, JAMES A. DIXON, DREW L. CARRAWAY, FRED N. OLIVER, WILLARD P. SCOTT, JOSEPH W. KEENA, S. R. PRINCE, CHARLES CLARK, R. GRANVILLE CURRY, FREDERICK M. DOLAN, F. C. HILLYER, T. C. MAURER, FRANK R. MULHOLLAND, T. H. HUTCHINSON, FRANK D. UPCHURCH, D. C. SMITH, J. U. GILLESPIE, G. R. NOTTINGHAM, FRANCIS T. P. PLIMPTON, LUTHER E. BIRDZELL, JR., M. L. STEPHENS, MILLER WALTON, CLAUDE PEPPER and J. HARDIN PETERSON for interveners.

THIRD SUPPLEMENTAL REPORT PROPOSED BY RALPH H. JEWELL, EXAMINER

Within the statutory period of 60 days from the date of the second supplemental report and order of the Commission of January 8, 1945, 261 I. C. C. 151, further modifying and approving a plan for the reorganization of the Florida East Coast Railway Company, debtor, pursuant

[1] Previous reports: 252 I. C. C. 423 and 731; 254 I. C. C. 865; and 261 I. C. C. 151.

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to the provisions of section 77 of the Bankruptcy Act, 1' U. S. Code sec. 205, petitions for its modification were file by the St. Joe Paper Company (controlled by the Alfre I. duPont estate), the deposit committee for the debtor'i first and refunding bonds (hereinafter called the 5-percent committee), S. A. Lynch, et al., the Safe Deposit and Trust Company of Baltimore, Frank B. Newman and Lorenzo C. Dilks. In some of the petitions requests for further hearing were made.

By the terms of section 77(d) of the act, the Commission may, after rendering a report and order in which it has approved a plan of reorganization, upon petition for good cause shown, filed within 60 days of the date of its order, and upon further hearing if the Commission shall deem it necessary, modify in a supplemental report and order any plan which it has approved, stating the reasons for such modifications.

The Commission heard oral argument on the matter of reopening the proceeding for the receipt of further evidence. Various parties urged the reopening for the purpose of supplementing the record in respect of the question of whether, under a plan of reorganization to be approved by the Commission, control of the reorganized debtor should vest in the St. Joe Paper Company, hereinafter called the St. Joe Company, or in the Atlantic Coast Line Railroad Company, hereinafter referred to as the Coast Line, or whether the debtor's properties should be subject to some other control.

By order entered July 20, 1945, the Commission directed that the proceeding be reopened and assigned for public hearing for the purpose of receiving any relevant and material evidence by any party in interest relating to further modification of the modified plan approved by the second supplemental report and order of January 8, 1945, and for the proposal of other plans.

Hearings were held at Washington, D. C. on November 6—9, 1945 and at West Palm Beach, Fla., on November

13—30, 1945. At the commencement of the hearings a new plan of reorganization was filed by the Coast Line which differed materially from, and superseded the plan previously filed by S. A. Lynch, et al., which was rejected by the Commission in its report of January 8, 1945. Under the terms of the Lynch plan the Coast Line would have obtained control of the reorganized debtor through ownership of a majority of its voting stock. Under the terms of the new Coast Line plan the properties of the debtor would be merged into the Coast Line and the creditors of the debtor would receive cash and Coast Line securities in satisfaction of their claims. No other plan was presented for the Commission's consideration but evidence in respect of other requested modifications of the modified plan approved by the Commission on January 8, 1945 including modifications of the new capital structure therein approved was introduced by some of the parties. The greater part of the evidence at the reopened hearings related, however, to the question of future control of the reorganized debtor. Under the modified plan approved by the Commission on January 8, 1945,[2] control would vest in the St. Joe Company by reason of its ownership of a majority in amount of the debtor's outstanding first and refunding mortgage bonds, these bonds being the only securities of the debtor exchangeable under the plan for the new securities of the reorganized debtor. Briefs have been filed.

Coast Line Plan

Description of plan.—Under the terms of the Coast Line plan, all the properties and assets of the debtor would be transferred to the Coast Line. The existing $12,000,000 first mortgage of the debtor would be paid in cash out of funds on hand in the debtor's treasury, and holders of the debtor's first and refunding mortgage 5-percent bonds, outstanding in the principal amount of $45,000,000 and upon

[2] 261 I. C. C. 151.

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which $30,000,000 of matured interest was in arrears as of December 31, 1945, would receive cash and Coast Line securities in the principal amounts and with annual interest and dividend requirements as shown in the following table:[3]

Cash disbursement—per $1,000 first and refunding bonds [a]—$133.33
Total disbursement—[a] $6,000,000.

	[b] Capital structure Per $1,000 first and refunding mortgage bonds	Total	Annual Requirements on total
Coast Line divisional first-mortgage Fixed-Interest 3½% bonds, due 1971	[c]$ 200.00	[c]$ 9,000,000	[d]$ 315,000 fixed interest [d] 45,000 fixed sinking fund
Coast Line divisional income 4¼% bonds, due 2021	[c] 250.00	[c] 11,250,000	[d] 478,125 contingent int. [d] 56,250 contingent sink. fund
Coast Line $4 preferred stock (non voting new issue) $100 par value	200.00	9,000,000	360,000
Coast Line common stock (present stock) $100 par value	133.33	6,000,000	—0—
Total of securities and annual requirements	$ 783.33	$35,250.00	[d]$1,254,375

[3] For the purpose of comparison the following table shows the capital structure provided for in the modified plan approved by the Commission's report of January 8, 1945, *supra*:

[a] At the hearings an alternative offer was made of $66.67 cash per bond ($3,000,000 total) plus all "free cash" in debtor's treasury.

[b] On its the debtor's equipment obligations which are to be assumed by the Coast Line.

[c] An alternative offer is made of $450 of divisional income first-mortgage bonds ($20,250,000 total) in lieu of part fixed-interest first-mortgage and part income second-mortgage divisional bonds as above shown.

[d] These amounts would be proportionally changed if the alternative provisions referred to in note [c] became effective.

Cash disbursement—to be determined by the court.

	[m] Capital Structure Per $1,000 first and refunding mortgage bond	Total	[n] Annual requirements on total
First-mortgage 75-year 4½% income bonds	$ 450.00	$20,250,000	$ 911,250—contingent interest 101,250—contingent sinking fund
Common stock, no par value, 202,500 shares stated at $100 per share	450.00	20,250,000	
Total	$ 900.00	$40,500,000	$1,012,500

[m] Omits equipment trust obligations.

[n] Omits capital-fund payments, none being provided for in the Coast Line plan.

All the new securities to be issued in the reorganization under the plan approved by the Commission would be securities of the reorganized debtor.

[The divisional first-mortgage and income bonds would be obligations of the Coast Line with the interest payable out of the income of the Coast Line, the principal, however, being secured only by the property of the debtor. Both mortgages would be closed mortgages.]

The Coast Line plan contains a provision that as a condition of its approval of the conveyance of the debtor's properties to the Coast Line, the Commission shall require a fair and equitable arrangement to protect the interests of the railroad employees affected.[4]

[4] This covenant was supplemented of record by a statement of counsel for the Coast Line as follows:

> If and when the Florida East Coast Railway property is operated as a part of Atlantic Coast Line, it will be the purpose of the Atlantic Coast Line to retain the officers and all others employed by the Trustees at the time of change in operation of the property. Thus none of the officers or employees would personally be adversely affected as to employment by the operation of the property by the Atlantic Coast Line.

and by the following further commitment:

> Both the Florida East Coast Railway Company and the Atlantic Coast Line Railroad Company are parties to the so-called Washington Job Protection Agreement. If these proceedings result in unification of the Florida East Coast Railway Company and the Atlantic Coast Line Railroad Company by merger, consolidation or conveyance of the property of the former to the latter, then and in that event it is the desire of the latter carrier that the provisions of said Agreement be applied for the protection of all employees who may be adversely affected as a result of these proceedings; said Agreement is accepted as a fair and equitable arrangement for the protection of all employees, and the final order of the Interstate Commerce Commission may so provide.

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The plan also contains a provision that the existing through routes via Jacksonville to and from points now served by the debtor in connection with Seaboard Air Line Railway Company and Southern Railway System shall be kept open.

In an introductory statement to the plan it is stated that should the Commission be of the opinion that any modification of the plan or any other plan providing for unification of the debtor and the Coast Line should be approved, the Coast Line will be prepared to give immediate consideration to any such modification or other plan.

Description of the Coast Line and Its Inter-Corporate Relationships

The Coast Line as of December 31, 1944 owned 4,697.49 miles of main line and branches, including its main double-track line from Richmond to Jacksonville, its main line (partly double tracked) from Jacksonville to Tampa and other lines (including branches) reaching points in Virginia, North Carolina, South Carolina, Georgia, Alabama and Florida. It reaches Washington, D. C., from Richmond, Va., over the Richmond, Fredericksburg and Potomac Railroad Company (hereinafter referred to as the R. F. & P.), having a one-sixth interest in the Richmond-Washington Company, which controls the R. F. & P.

The Coast Line's affiliates as referred to in the record include the Fort Myers Southern Railroad Company, Tampa Southern Railroad Company, Virginia and Carolina Southern Railroad Company, Columbia, Newberry & Laurens Railroad Company, Winston-Salem Southbound Railway Company and Charleston and Western Carolina Railway Company. The Winston-Salem Southbound Railway Company, extending from Winston-Salem, N. C., to Wadesboro, N. C., is owned jointly by the Coast Line and the Norfolk & Western Railway Company and the Charleston and Western Carolina Railway Company extending from Spar-

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tanburg, S. C. to Port Royal, S. C., with branches to Anderson and Greenville, S. C., is controlled by the Atlantic Coast Line Company (hereinafter referred to as the Coast Line Company), which is the owner of 26.56 percent of the stock of the Coast Line. This latter relationship will be referred to later herein.

The Coast Line and the Louisville and Nashville Railroad Company hereinafter referred to as the L. & N., jointly lease the Clinchfield Railroad Company, having lines extending from Elkhorn City, Ky., to Spartanburg, S. C., and the Georgia Railroad, having a main line from Augusta, Ga., to Atlanta, Ga., with a branch to Macon, Ga. The latter lease covers approximately 50 percent of the stock of the Atlanta and West Point Railroad Company and The Western Railway of Alabama whose lines extend from Atlanta, Ga., to Montgomery and Selma, Alabama.

The Coast Line as of December 31, 1944 owned 596,700 shares of stock of the L. & N. This stock was deposited as collateral security with the trustee of the Coast Line's Louisville & Nashville collateral-trust 4-percent bond indenture, originally securing $35,000,000 bonds. During the year 1945, the L. & N. stock was divided, 2 new shares being issued for each old share, making the Coast Line's ownership 1,193,400 shares. Subsequently, the Coast Line sold 369,973 of these new shares, the proceeds being used to retire its collateral-trust bonds, of which at the time $20,000,000 remained outstanding. The balance of the L. & N. stock retained by the Coast Line amounts to 823,427 shares or 35 percent of the total issue. The L. & N. controls by stock ownership the Nashville, Chattanooga & St. Louis Railway.

In general the lines of railroad owned, leased or controlled by the Coast Line (including the L. & N. as a controlled line) or over which it has trackage rights, comprise about 11,000 miles and extend south along the Atlantic seaboard from Washington, D. C., through Richmond and Norfolk, Va., Wilmington, N. C., Charleston, S. C., and Sav-

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annah, Ga., into Florida and west to New Orleans, La., Birmingham, Ala., Atlanta, Ga., Nashville and Memphis, Tenn., Hickman, Ky., St. Louis, Mo., Louisville, Ky., Cincinnati, Ohio, Winston-Salem, N. C., and into the coal territory served by the Clinchfield Railroad Company.

The Coast Line operated 2,029.63 miles of railroad in the State of Florida in 1940 or 37.76 percent of the total of all railroads. Together with the L. & N. the total was 42.28 percent, which, combined with the debtor's mileage of 12.74 percent would constitute 55.02 percent. The mileage of the Seaboard Air Line Railway Company hereinafter referred to as the Seaboard was 31.33 percent of the State total. Similar percentages of total tons of frieght carried in the State of Florida in the same year are by Coast Line 38.53 percent, L. & N. 5.25 percent, combined Coast Line and L. & N. 43.78 percent, debtor 7.7 percent, which, if added to the combined Coast Line and L. & N. tonnage, would produce 51.48 percent, and Seaboard 34.38 percent.

The lines of the Coast Line and L. & N. serve principally in Florida its central and northern sections and west coast, reaching south to St. Petersburg, Tampa, Naples and Everglades.

Generally speaking, the Seaboard is competitive with the Coast Line throughout the southeastern territory of the United States including the State of Florida. In Florida the Seaboard competes with the debtor for traffic originating and delivered to points on the east coast from West Palm Beach to Homestead, south of Miami. The debtor and the Coast Line with their principal connection and traffic interchange at Jacksonville, Fla., are practically noncompetitive and have maintained a close traffic relationship in the past with respect to both freight and passenger traffic moving between the east coast of Florida and the north and west. Other connections and minor interchange points between the Coast Line and the debtor are at Palatka, Benson Junction and Lake Harbor, all in Florida.

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The Coast Line extensively advertises and operates a through passenger service in connection with the debtor from the west and north to the east coast of Florida. The debtor's passenger interchange with other lines is comparatively negligible. The freight traffic interchange between the Coast Line and the debtor about equals the debtor's interchanges with all other railroads in the case of traffic originated on the debtor's line and is somewhat in excess thereof in the case of traffic terminated on the debtor's line.

The Coast Line and the debtor jointly own The Peninsular & Occidental Steamship Company operating freight and passenger service (except as discontinued due to World War II) between Miami, Fla., and Havana, Cuba and between Port Tampa, Fla., and Havana, Cuba.

The Coast Line Company, a Connecticut corporation, created or utilized to assemble the present Coast Line railroad system, own 26.56 percent of the voting stock of the Coast Line and in *Atlantic Coast Line R. Co., et al. Purchase,* Finance Docket 15015, decided December 12, 1945, 261 I. C. C. ———, (memorandum decision) was found by the Commission, division 4, to hold control of the Coast Line within the meaning of the Interstate Commerce Act. Its other investments include all the stock of the Charleston & Western Carolina Railway Company, more than 50 percent of the stock of the South Carolina Pacific Railway Company (a part of the Coast Line system) and other stocks and bonds or railway companies mostly affiliated with the Coast Line system. Its total investment in "affiliates" is $21,874,224 of which bonds of the Coast Line in the amount of $3,905,265 are deposited with the Safe Deposit and Trust Company of Baltimore, hereinafter called the Safe Deposit Company, which as sole trustee, co-trustee, co-executor, agent, and owner, holds 140,925 shares or 59.9 percent of the 235,200 shares of stock of the Coast Line Company (of Connecticut). Additionally the Safe Deposit Company holds in similar capacities 62,029 or 7.51 percent

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of the stock of the Coast Line. The Safe Deposit Company administers the estates of Henry Walters and certain of his associates who were principally instrumental in building the Coast Line system through the medium of the Coast Line Company. Of the 12 directors of the Coast Line, 6 are directors of the Coast Line Company including the president of the latter who is chairman of the board of both companies. Of these 6 directors, 2 are officers of the Safe Deposit Company.

The Safe Deposit Company formerly supported the plan proposed by the St. Joe Company. The chairman of the board of directors of the Safe Deposit Company, while not committing his company to further action, testified in support of the St. Joe Company plan at the hearing on a plan for the reorganization of the debtor held by the Commission in May 1944. At that time the Safe Deposit Company held in trust about $2,000,000 principal amount of the debtor's first and refunding bonds, purchased before the receivership, and about $400,000 or $500,000 of the debtor's first-mortgage bonds. Subsequently, when the question of possible Coast Line control arose upon the petition filed by S. A. Lynch, *et al.*, for a reopening of the proceeding, the Safe Deposit Company withdrew its support of the St. Joe Company plan and now supports the plan proposed by the Coast Line. The executive committee of the Safe Deposit Company's board of directors has approved this plan and its president stated at the further hearing that the plan would be submitted to the board of directors for approval.

Description of The St. Joe Company and Other duPont Interests

The St. Joe Company owns about 56 percent of the $45,000,000 principal amount of the debtor's outstanding first and refunding mortgage bonds, which it acquired to that extent for the avowed purpose of obtaining control

of the debtor's line of railroad upon its reorganization. The activities, holdings and relationship with the estate of Alfred I. duPont of this company (and its predecessor in interest in this proceeding, the Florida National Building Corporation) have been heretofore generally described in former reports in this proceeding. At the reopened hearings in November 1945, the record in this respect was greatly amplified.

The trustees of the duPont estate for whom Edward Ball has been the spokesman and active negotiator, if not the dominating influence in this reorganization proceeding, are four in number. They comprise at present Ball, the Florida National Bank of Jacksonville, Jessie Ball duPont, widow of Alfred I. duPont and sister of Edward Ball, and a son-in-law, of duPont, Elbert Dent. Vacancies among the trustees are to be filled by the remaining trustees except that Dr. F. P. Gaines, president of Washington and Lee University, is specifically named to succeed Ball. The trustees must act by a majority unless majority decision is impossible, in which case the ruling of the corporate trustee is final.

The investments and activities of the estate are large, varied and, except for the original basic investments in E. I. du Pont de Nemours & Company and General Motors Corporation, are mostly centered in the State of Florida. The income from the trust estate under the terms of of duPont's will is subject to certain annuities and a life interest of duPont's widow, but otherwise is to be devoted to a charitable Delaware corporation to be created by the trustees and entitled "The Nemours Foundation". This foundation is for the purpose of maintaining the family estate in Delaware known as "Nemours" as an institution for the care and treatment of crippled children, not incurable, and the care of old men and women, first consideration to be given to residents of Delaware. Any surplus income may be used in contributions to other worthy charitable institutions established for the same purposes.

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As of December 31, 1944, the inventory value of the trust assets was $49,948,142, of which $32,591,063 represented stock in the duPont and General Motors companies, $12,474,104 stock (76½ percent) of the St. Joe Company, $3,063,784 stocks of Florida banks, $6,252 bonds of the debtor, $144,189 other bonds, $209,060 other securities, $613,940 real estate, and $845,750 cash. One of the banks, the investment in which is included above, owns slightly more than one-half the stock of the Union Terminal Warehouse Co. at Jacksonville, Fla. and another one owns a bank and office building at Miami, valued at $3,261,559.

A balance sheet as of December 31, 1944, of the St. Joe Company shows assets as follows: current assets $13,648,695, including "investments at cost" $10,569,643, investments in affiliated companies $1,204,174, plant property, less depreciation, $5,207,841, other property less reserves for depreciation and depletion $5,797,345, other assets $12,366 and deferred charges $151,492, total of all assets, $26,021,913. Liabilities amounted to $18,107,107, capital surplus to $5,088,261 and earned surplus to $2,826,545. Based on present market quotations and values, the value of the assets of the St. Joe Company are greatly in excess of the above book values.

The paper mill owned by the company is located at Fort St. Joe on the Gulf of Mexico in northwestern Florida south of Chattahoochee at which point the Apalachicola Northern Railroad Company, hereinafter referred to as the Apalachicola, which serves the St. Joe Paper Company plant and other industries, connects with the L & N, Seaboard and the Coast Line. All the securities of the Apalachicola are owned by the St. Joe Company. Other investments by the latter company include a large amount of land in west Florida, a telephone and telegraph company, operating in and around St. Joe, extensive and valuable real estate holdings, including some hotels, on the east coast of Florida in Jacksonville, Miami, Palatka, Daytona Beach, Fort Pierce, West Palm Beach, and other points, a controlling interest

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in the Florida National Bank & Trust Company of Miami, $25,000,000 of the debtor's first and refunding mortgage bonds and an undisclosed amount of the debtor's first-mortgage bonds. Ball and his sister, Mrs. duPont, have a substantial stock interest in the St. Joe Company.

There are 14 Florida banks owned or controlled by the duPont trust (including 1 owned by the St. Joe Company) and 3 other banks in which a substantial interest is held. These banks are referred to in the record as the Florida National group of banks and doubtless have been in large part the medium through which the duPont interests have assisted directly and indirectly in the refunding of over $100,000,000, par value of securities of political subdivisions of the State of Florida. The banks are located in St. Petersburg, Pensacola, Orlando, Lakeland, Key West, Ocala, Port St. Joe, Bartow, Starke, Chipley, and at Jacksonville, Miami, West Palm Beach, Daytona Beach, Fort Pierce, Belle Glade and Coral Gables on the east coast. Some of these banks were acquired when they were insolvent during the depression, payment or guaranty of payment, of their deposits being made by the duPont interests at the times of acquisition and in some instances resistance was also given in the crisis to banks owned by other interests located in the same communities as the duPont banks.

Objections of St. Joe Company to the Filing of the Coast Line Plan and to Its Validity as a Plan Proper to be Filed Under Section 77

The St. Joe Company contends that the Coast Line is not a party qualified under section 77 to file a plan of reorganization.

Subsection (d) provides that a plan shall be filed by the debtor and that "plans may likewise be filed at any time before, or with the consent of the Commission during the hearings * * * by the trustee or trustees or by or on behalf of the creditors, being not less than 10 per centum in amount

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f any class of creditors * * * or with the consent of the Commission by any party in interest."

The Coast Line was granted leave to intervene in this roceeding by order of the Commission entered November 0, 1944. At that time there was pending before the Commission the petition filed by S. A. Lynch, et al., for a reopening of the proceeding to allow petitioners to file a plan of eorganization, which contemplated a transfer of control f the debtor's properties to the Coast Line. After the roceedings were ordered reopened the Coast Line presented its own plan, by which, as already described, it ould obtain control of the debtor's properties by merger r consolidation. This plan was filed by the Coast Line at he reopened hearings in November, 1945.

On October 18, 1945, shortly prior to the date upon hich the Coast Line presented its plan and about 3 weeks rior to the commencement of the reopened hearings, the Coast Line procured assignment to it of two claims on open ccount against the debtor totaling $1,900,000, these claims eing previously filed by Florida Coast Car Ferry Company nd by the trustees under the will of Mary Flagler Bingham.

In its report of January 8, 1945 the Commission had ffirmed the previous finding in its report of April 6, 1942, hat the assets of the debtor not subject to the liens of its nortgages are of such small amount in comparison with he amount of general unsecured claims that any allotment f new common stock to the unsecured creditors would be so nsignificant in amount as to present insurmountable difficulties in its distribution. Therefore, the Commission found hat such claims are without value. Until the proceeding was reopened in 1945 no unsecured creditor (with the exception of one party who did not appear except to file a brief) had contested this finding. Neither of the two assignors f the claims held by the Coast Line made representations n this proceeding or filed objections to the Commission's finding.

The Coast Line now contends that this finding is in error and claims that the unpledged assets of the debtor are sufficient to warrant a cash payment of about 2.75 percent of the principal amount of the unsecured claims. This contention will be discussed later in this report.

[The record of this proceeding was reopened principally to receive evidence with respect to any new plans which might be filed, and more particularly a plan providing for control of the debtor by the Coast Line. The approval of a plan providing for such control was urged upon the Commission at the oral argument upon the ground that it is required in the public interest. In order properly to develop evidence on this issue, participation in the reopened hearings by the Coast Line as a party to the proceeding was desirable if not essential.]

It will be noted that subsection (d) of section 77 provides that, with the consent of the Commission, a plan may be filed during the hearings by "any party in interest". In consideration of all the above facts, the Commission should find that the Coast Line is a party in interest entitled under the statute to file a plan.

The St. Joe Company also claims that the filing of the Coast Line plan with the Commission was not properly or legally authorized by the Coast Line. A resolution of the Coast Line's board of directors approved at a meeting held Octotber 18, 1945 authorized and directed, on behalf of the Company, its chairman of the board and president, or either of them:

> To transmit to the Interstate Commerce Commission and the other interested parties on or before October 23, 1945, a plan substantially in the form submitted to this meeting, under which all the property of Florida East Coast Railway would be merged or consolidated with this Company. • • •
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> • • • to make and file such application or petitions with the Interstate Commerce Commission, and

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to take all such other and further action as may be necessary.

Thereafter, the Coast Line plan was transmitted to the Commission by the specified officers of the Coast Line and filed at the further hearings held by the Commission in November 1945. At that time the St. Joe Company reserved the right to contend that the Coast Line was not a party entitled to file a plan.

The St. Joe Company asserts that no proof was offered that the plan filed with the Commission was the plan, or substantially the same plan, submitted to the Coast Line's board of directors and that no plan was adopted or made binding upon the Coast Line by the above-quoted resolution nor were the specified officers given authority to carry out, or to obligate the Coast Line to carry out the plan if it should be approved by the Commission. The St. Joe Company further maintains that the plan itself contains nothing making it a binding commitment of the Coast Line nor has that company, so far as the record discloses, made any effort to obtain the approval by the Coast Line stockholders of the contemplated merger as required by the Coast Line's articles of incorporation.[5] The St. Joe Company states that the Commission in effect is requested to approve a plan the consummation of which depends upon a vote of Coast Line stockholders not yet determined and that such a plan does not comply with the requirements of section 77 that the plan provide the means for its execution.

It is true that there is no binding commitment, if any were possible to be made at this time, by the Coast Line to accept the plan which it filed, or any other plan which

[5]The Coast Line on May 20, 1945 filed with the Commission a petition for a limited reopening of the proceeding to receive in evidence as exhibits (1) a certified copy of a certificate for amendment of its charter, dated April 16, 1946, the effect of which would be to require the approval of only the holders of a majority of its stock to the proposed merger or consolidation of the debtor with the Coast Line or acquisition by the latter of the properties of the former and (2) a written opinion dated May 15, 1945 by R. B. Gwathmey, general attorney of the Coast Line, that the Coast Line's charter as so amended will have that effect.

may be approved by the Commission. A refusal by the Coast Line after the Commission's approval of a plan in the consummation of which its active participation is a prerequisite would result in nullifying the plan. The Coast Line plan, however, should not for that reason be held to lack the "adequate means for the execution of the plan" required by the statute. The adequate means are included in the plan, if the plan shall be approved by the Commission and thereafter accepted by the Coast Line. The Commission should consider that it is within the discretion and judgment, in view of the present limited commitment of the Coast Line and in the light of all the special circumstances and necessities of this proceeding, to determine whether ultimate acceptance by the Coast Line of a plan approved by the Commission, if its acceptance should be necessary, is a matter of such uncertainty as not to warrant approval of such a plan if otherwise it is found to be desirable and in conformity with the requirements of section 77.

With respect to the objections as to the sufficiency of the authorization by the Coast Line's board of directors and stockholders of the filing of the plan, the Commission should hold that the alleged defects in the procedure adopted by the Coast Line in proposing and prosecuting its plan of reorganization in this proceeding, if any exist, are not such as can not be cured, if the plan is approved, by appropriate action before the Commission shall proceed under subsection (f)[6] of section 77 to grant the authority necessary to put the plan into effect.

The St. Joe Company also takes the position that the Coast Line Company Safe Deposit Company, which did not join in the Coast Line plan, control the Coast Line (the latter company through control of the Coast Line Com-

[6] Subsection (f) provides in part:

Upon confirmation of a plan the Commission shall, without further proceedings, grant authority for the issue of any securities, assumption of obligations, transfer of any property, sale, consolidation or merger of the debtor's property, or pooling of traffic, to the extent contemplated by the plan and not inconsistent with the provisions and purposes of the Interstate Commerce Act as now or hereafter amended.

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pany) and therefore are indispensable parties to any plan for acquisition by the Coast Line of the debtor's properties. *In Atlantic Coast Line R. Co., et al., Purchase, supra,* the Commission found, as already stated, that the Coast Line Company controls the Coast Line and that it was a necessary party to that proceeding which was under the provisions of the Interstate Commerce Act. No finding of control was made with respect to the Safe Deposit Company. In support of its finding that the Coast Line Company controls the Coast Line the Commission cited *United States v. Marshall Transport Company,* 322 U. S. 31.

Section 77 of the Bankruptcy Act provides that a plan of reorganization shall not be inconsistent with the provisions and purposes of the Interstate Commerce Act, but does not specify that the same procedure must be followed. To insure conformity with the provisions of subsection (f) of section 77, the record of a reorganization proceeding involving the question of an acquisition of the properties of the debtor by another carrier or by a noncarrier company which already controls a carrier, should be sufficient to enable the Commission in approving a plan to make the findings required under the Interstate Commerce Act in respect of such an acquisition. The Commission, division 4, by order entered October 14, 1940, specified the information required to be furnished in support of consolidation, merger or acquisition applications under section 5(2) of the Interstate Commerce Act.

Representatives of both the Coast Line Company and the Safe Deposit Company appeared and testified at the hearings in November 1945 in this proceeding in support of the Coast Line plan, and otherwise the record is sufficient upon this issue for the Commission to make the necessary findings.

As a part of its orders approving plans of reorganization under section 77, the Commission invariably, as it has in the present case, inserts the following provision:

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> *It is further ordered,* that nothing herein contained shall be, or be construed as, a grant of authority for the issue of any securities, assumption of obligations, transfer of any property, sale, consolidation, or merger of the debtor's properties, or pooling of traffic, pursuant to either the Bankruptcy Act or the Interstate Commerce Act, until further action by this Commission upon confirmation of the plan by the court.

If any procedure under the Interstate Commerce Act later should be found to be required in this connection, the appropriate action can be taken before the Commission grants the final authority specified in subsection (f) of section 77.

The Commission should find that the fact that the Coast Line Company and Safe Deposit Company did not join with the Coast Line in filing the Coast Line plan will not in itself prevent approval of the plan.

Power of the Commission Under the Staute to Approve a Plan Transferring the Debtor's Property to the Coast Line

Sub-section (b) of section 77 of the Bankruptcy Act provides among other things that a plan of reorganization:

> shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; may include provisions modifying or altering the rights of stockholders generally, or of any class of them, either through the issuance of new securities of any character, or otherwise; * * * shall provide adequate means for the execution of the plan, which may include the transfer of any interest in or control of all or any part of the property of the debtor to another corporation or corporations, the merger or

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> consolidation of the debtor with another corporation or corporations, the retention of all or any part of the property by the debtor, the sale of all or any part of the property of the debtor either subject to or free from any lien at not less than a fair upset price, the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein, * * *.

Subsection (d) contains a provision that the plan approved by the Commission shall, in its opinion, be "compatible with the public interest."

Subsection (e) provides in part that the court may approve a plan previously approved by the Commission if satisfied that:

> It complies with the provisions of subsection (b) of this section, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders.

Subsection (e) further provides that the judge shall confirm the plan upon receipt of certification by the Commission of the results of voting on acceptance or rejection of the approved plan, if the judge is satisfied that it has been accepted by the requisite proportion of each class of creditors and stockholders voting on the plan. He may also confirm a plan which has not been so accepted

> if he is satisfied and finds, after hearing, that it makes adequate provision for fair and equitable treatment for the interests or claims of those rejecting it; that such rejection is not reasonably justified in the light of the respective rights and interests of those re-

jecting it and all the relevant facts; and that the plan conforms to the requirements of clauses (1) to (3), inclusive, of the first paragraph of this subsection (e).

The St. Joe Company contends that, in the absence of full payment of the first and refunding bondholders' claim or of a public sale of the debtor's properties at an upset price fixed by the Commission, these bondholders are entitled upon reorganization to possession of all the properties of the debtor including its cash on hand. The St. Joe Company further asserts that any interpretation of the powers conferred upon the Commission and the court by section 77 which would permit of a denial of this right to the bondholders over their objection[7] (and in the absence of an exercise of the right of eminent domain) would violate the Fifth Amendment of the Constitution. The St. Joe Company bases its argument fundamentally on the decision of the United States Supreme Court in *Louisville Joint Stock Land Bank* v. *Radford,* 295 U. S. 555.

The Coast Line, while acknowledging the principle that the property of a debtor must be devoted to satisfaction of creditors' claims, contends that section 77, providing means for discharge of claims against railroad debtors other than by public foreclosure sales, was enacted in recognition of the fact that such sales are costly, cumbersome, inadequate and impracticable. The Coast Line, in support of its argument that a public sale of the debtor's property is not required even though creditors will not receive full satisfaction of the total amount of their claims, cites a decision of the Supreme Court and two subsequent circuit court of appeals decisions[8] where creditors proceeding under section

[7] The St. Joe Company owns 56 percent of outstanding first and refunding mortgage bonds and asserts that holders of 75 percent have stated unequivocally that they would reject the Coast Line plan and would not agree to any merger of the debtor's property.

[8] *Wright* v. *Union Central Life Ins. Co.,* 311 U. S. 273; *State of North Dakota* v. *Szarkowski,* 142 F. (2d) 333 (certiorari denied, 323 U. S. 718), and *North Dakota* v. *Stanton,* 142 F. (2d), 860 (certiorari denied 323 U. S. 718).

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75 of the Bankruptcy Act were denied foreclosure sales and the mortgagors were afforded opportunity to redeem the mortgaged properties for cash at appraised values fixed by the court. The Coast Line contends that the "equitable equivalent of the rights surrendered'" by the first and refunding bondholders in this proceeding may be represented by payment in securities as well as by cash if the securities offered are of a value found to be sufficient in "the informed judgment of the Commission and court based on consideration of all relevant facts'". The Coast Line insists that the paramount importance of the public interest justifies a denial to the first and refunding bondholders of ownership and control of the debtor's property.

Further discussion and decision, if it shall be required, of the question of the Commission's power under section 77 to approve a plan in this proceeding transferring control of the debtor's properties to the Coast Line will be deferred until consideration has been given to the evidence in respect of the public interest in Coast Line or duPont control and the sufficiency of the treatment accorded the first and refunding bondholders in satisfaction of their claim under the terms of the Coast Line plan.

Public Interest in Control

The Coast Line takes the position that there is no presumption that control by the St. Joe Company of the debtor will be in the public interest, that a convincing affirmative showing must be made by the St. Joe Company to that effect, that the same criteria as to the public interest should control the Commission's decision as in a proceeding under section 5 of the Interstate Commerce Act, and that the St. Joe Company, having acquired a majority of the debtor's first and refunding bonds for the avowed purpose of obtaining control of the debtor has the burden of proving

[9] *Group of Institutional Investors* v. *Chicago, M. St. P. & P. R. Co.*, 318 U. S. 523, 565-566.

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that such control will be compatible with the public interest. The Coast Line contends that the St. Joe Company has not fulfilled this latter obligation, especially by failing to make a full disclosure of all relevant information concerning its holdings and the conduct of its affairs.

There is no doubt that control of a reorganized debtor is a matter of the greatest public interest.[10] This proceeding was reopened at the request of the Coast Line and a voluminous record developed, principally to acquaint the Commission with the nature and extent of that interest, and more particularly to determine whether the debtor should be operated in the future under the control of the Coast Line or the duPont interests, or otherwise as an independent carrier not controlled by any trunk line.

The proceedings before the Commission were previously reopened for public hearings, which were held in May, 1944. At that time no representations were made that control by the St. Joe Company, which by then had purchased a majority of the debtor's first and refunding bonds, would not be compatible with the public interest, providing certain safeguards of minority interests were assured. Such evidence as was then offered on that subject favored operation by the St. Joe Company. It was only after the record was closed and shortly prior to the issuance of the Commission's report and order approving its modified plan, that preference for any other control was voiced by any of the parties to the proceeding.

The first and refunding bondholders will, upon satisfaction of the debtor's first mortgage in cash, constitute the

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[10] *In New York Central Securities Corp.* v. *United States*, 287 U. S. 12, 24-25, the Supreme Court stated that the term public interest "is not a concept without ascertainable criteria, but has direct relation to adequacy of transportation service, to its essential conditions of economy and efficiency, and to appropriate provision and best use of transportation facilities." And in *Ecker et al.* v. *Western Pacific R. Corp. et al.*, 318 U. S. 448, 468, the court said: "Those reorganizations require something more than contests between adversary interests to produce plans which are fair and in the public interest. When the public interest, as distinguished from private, bulks large in the problem, the solution is largely a function of the legislative and administrative agencies of government with their facilities and experience in *investigating* all aspects of the problem and appraising the general interest."

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only class of creditors having an interest in the reorganization other than holders of equipment trusts and of certain claims having preference over the liens of the debtor's mortgages and unless, contrary to its previous decisions in this proceeding, the Commission and the court shall find that there are unpledged assets of the debtor of sufficient value to warrant a dividend on unsecured claims as urged by the Coast Line and one other party.

The amount of the first and refunding bondholders' claim is far in excess of the value of the debtor's properties as determined by the Commission. Under these circumstances a plan of reorganization of the debtor would normally, in observance of the requirements of the act that the plan be fair and equitable and afford due recognition of the rights of each class of creditors, and in the absence of opposing evidence, result in a vesting of ownership of all the debtor's property in the first and refunding bondholders other than any claim of unsecured creditors to unpledged assets. Upon the record as it stood before the proceedings were reopened in November 1945, the Commission approved a plan having that effect. The Coast Line plan, by which control would be transferred to that carrier, is in effect a request or application to the Commission by one carrier for authority to acquire another.

The president of the St. Joe Company during his lengthy cross-examination at the November 1945 hearings was at times indefinite and reticent in replying to questions regarding some details of the duPont interests and of his own affairs. Sec. 5(2) of the Interstate Commerce Act does not require authorization by the Commission of an acquisition of control by a "person which is not a carrier" of a carrier unless control of two or more carriers by such noncarrier applicant is involved. The St. Joe Company would not acquire control of the debtor under the approved plan until consummation of the plan, and until after further action by the Commission upon confirmation of the plan by the court as stated in the order of the Commission approv-

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ing the plan of January 8, 1945. The St. Joe Company has stated that, if the plan approved by the Commission shall permit it to acquire control of the debtor, it will apply to the Commission under the provisions of section 5(2) of the Interstate Commerce Act for authority to control both the Apalachicola and the debtor and, if such authority is not granted, that it will divest itself of control of the Apalachicola.

In view of this statement by the St. Joe Company and the further action which the Commission shall take prior to consummation of the approved plan, the provisions of section 5(2) of the Interstate Commerce Act, should not be held applicable at this time to the matter of control of the debtor by the St. Joe Company, as contended by the Coast Line.

However, under the provisions of section 77 of the Bankruptcy Act the approved plan must be found to be compatible with the public interest. The record with respect to both aspirants for control of the debtor and regarding other matters affecting the public interest is unusually extensive in both amount and scope and should be found by the Commission to be a sufficient basis upon which to arrive at a well-informed and equitable decision.

Service to the public.—Evidence was offered by the Coast Line to demonstrate that a merger with the debtor will result in improved and expedited service on the debtor's line. As to passenger service, it is urged that locomotive runs could be lengthened, equipment pooled resulting in a more extensive coordinated through-train operation, the Coast Line's 20 passenger traffic offices utilized for both carriers, through operation of diners more completely realized, advertising programs combined, train personnel coordinated, interline tickets eliminated rendering unnecessary a separate examination of through tickets by the debtor's conductors and adjustment of tickets refund and baggage claims simplified.

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While some conveniences in these respects may result from unified control, they would be of minor consequence and most, if not all of them would be such as could be realized, if deemed sufficiently advantageous, by arrangement between an independently reorganized debtor and the Coast Line.

As to freight service, the evidence is less tenuous. The Coast Line points out that at present the debtor will not accept orders from its shippers for diversions and reconsignments of north-bound shipments at intermediate points on its line and will accept such orders to Bowden Yard (where the present interchange on through traffic is made with the Coast Line) only if requests are received at that point at least 1 hour prior to the scheduled arrival of the debtor's trains. As a consequence, it appears to be the practice of shippers on the debtor's line to communicate, sometimes at extra expense and possible inconvenience, with Coast Line agents in order to obtain the desired divisions or reconsignments of their shipments.

However, in the event of a merger of the two carriers, shipments of freight from the debtor's line destined to points north and west of Jacksonville would still be subject to routing over several different railroads north and west of Jacksonville and the record shows that the general shipping practice is for a consignor to request a diversion or reconsignment directly with the road affected. There might be some slight benefit to shippers in extended stoppage in transit privileges although witnesses for the Jacksonville Chamber of Commerce, Greater Miami Traffic Association and the Southern Railway Company minimized the advantage that would result in that respect from any consolidation of the railroads.

A rather minor saving would accrue to shippers in the event of unification of the carriers through the automatic elimination of joint-line differentials over single-line hauls in the case of some intrastate rates at present prevailing on certain low grade commodities. There was testimony,

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however, that, if a large movement of these commodities occurs enabling them to be moved in trainload quantities, the practice is to establish a specific commodity rate for the particular movement.

There would be some saving to shippers in case of a merger on reciprocal switching charges on shipments to or from industries located on the debtor's or Coast Line's tracks at Jacksonville and South Jacksonville. However, the traffic manager of the Jacksonville Chamber of Commerce, T. C. Maurer, testified that the majority of the industries in Jacksonville are not located on the Coast Line's or debtor's tracks but on the tracks of the Southern Railway, Seaboard and Jacksonville Terminal Company and therefore the situation as to them would be unchanged. As to South Jacksonville, to which point Jacksonville rates do not apply, the witness testified that the debtor is now sponsoring a proposal to apply the same in-bound rates as those applicable to Jacksonville and that, of the other carriers affected, one of them at least, the Southern Railway Company, has concurred in the proposal. Maurer's testimony on this point was not controverted.

It appears that there would be little if any economy or convenience served by a pooling of either locomotive or freight-car equipment. Refrigerator cars are furnished the debtor by private car companies and by the Fruit Growers Express on the basis of demand for the cars, and normally the number of loaded box-cars coming on to the debtor's line from the north and west exceeds the number of those destined northward.

Any lack of cars for north-bound traffic from the debtor's line is supplied by its connections from their excess cars. The debtor has a good supply of Diesel and steam locomotives with more of the former under order. It might be possible to effect some economy, not otherwise obtainable by arrangement between an independent debtor and the Coast Line, in utilization of power by longer runs if the locomotives of both carriers were owned by one company but this does not appear to be an important consideration.

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There is considerable evidence regarding facilitation of third morning delivery in northern markets of perishable freight from certain points on the debtor's line and from points on the Coast Line of equivalent distance south of Jacksonville. The conclusion should be reached from the record that such earlier delivery, if necessary, can be put into effect without unification. There appears, however, to be no particular demand for the expedited service. The Coast Line by brief minimizes the importance of this issue.

There also is evidence that a unification of the properties will result in a greater use of Coast Line-debtor connections at interior junctions, viz., Palatka, Benson Junction and Lake Harbor. Upon merger of the two companies the Coast Line asserts that the junction point could be used which would afford the most efficient and economical service. At present, routes through Benson Junction and Palatka are open only on intrastate traffic, since the debtor wishes to preserve its long haul on interstate traffic by interchange at Jacksonville. In rebuttal, testimony was offered to show that the Jacksonville route is preferable from an operating and service standpoint to routes via the Palatka and Benson Junction connections, both of the latter points being on branch lines. The vice president in charge of traffic of the Coast Line stated that he did not think there is any intention of the Coast Line to divert traffic which formerly moved over the debtor's line to Jacksonville by routing it through the Lake Harbor, Benson or Palatka junctions. The St. Joe Company asserts that, in any event, the Commission has the power under the Interstate Commerce Act to establish the short-haul routes if they are found necessary in the public interest. The situation with respect to the Lake Harbor junction is the only one stressed by the Coast Line on brief as resulting in important advantage. The plant of the U. S. Sugar Corporation is located at Clewiston, 10 miles west of Lake Harbor, and a large part of the sugar cane used by the plant is brought into Lake Harbor from the eastward Canal Point area by

the debtor's engines and crews and handled from Lake Harbor to Clewiston by those of the Coast Line. A single operation could result from unification of the two roads with a consequent saving in the number of locomotives used in the cane grinding season.

The Coast Line contends that unification of the two roads would permit the abandonment of the Bowden Yard at South Jacksonville where the debtor now classifies the freight for interchange with the Coast Line at Moncrief and that yard operations could be consolidated at the latter's Moncrief yard resulting in a facilitation of freight movement. Upon this point the record is inconclusive, probably necessarily so. *There might be some saving in time of shipments south-bound,* but it is doubtful that there would be much, if any, time saved on north-bound shipments. The original claim of the Coast Line in the latter respect is not substantiated by the record. The urgency of movement is mostly in connection with the north-bound perishable shipments.

The Coast Line also contends that a consolidation of the freight stations of the two carriers in Jacksonville would result in greater convenience to the public in that one of the two warehouses could be made into a single delivery station and the other into a single receiving station. Aside from any resulting economy in expense, which will be discussed later, the possibility of the unification better serving the public convenience is minimized by the fact that the two stations now adjoin each other, one-half of the same building being utilized by each carrier.

As to the promotion of efficiency of transportation service generally by reason of improvement in the physical properties of the 2 carriers, the record does not furnish a basis for a conclusion that it would be materially affected whether the debtor's properties are operated independently or as a part of the Coast Line. The Coast Line has effected in the last few years a really outstanding improvement and rehabilitation of its roadbed and other properties, includ-

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ing, as to equipment, the purchase of 53 Diesel road passenger units, 36 Diesel road freight locomotives, 52 lightweight passenger-train cars and 11,776 freight-train cars. The debtor has also purchased new equipment and is now embarked on a rehabilitation program which has been described in the Commission's former reports in this proceeding and for payment of which provision has been made.

A very considerable amount of evidence was devoted to the testimony of two witnesses who introduced independent comparative studies of certain selected ratios, obtained from railroad operating statistics compiled by the Commission, to determine the relative efficiency of operation of the debtor and of the Coast Line during the period 1936-1940, a period selected by both witnesses as one of normal operations. One of these studies was made by Leonard P. Ayers for Alleghany Corporation, intervener and owner of $899,000, principal amount of first and refunding bonds purchased for investment in the open market at an average price of 65.97. Alleghany Corporation is one of the large owners of these bonds favoring control of the debtor by the St. Joe Company. The other study was made by J. C. McWilliams for the St. Joe Company.[11]

While a very few of the ratios were favorable to the Coast Line the general result from both studies indicated in the opinion of the witnesses that the debtor was operated during the period under consideration more efficiently than was the Coast Line, especially in the matters of utilization of manpower, utilization of equipment and consumption of fuel. The latter company attacks the inferences drawn from these studies on several general grounds and contends that the studies, as used by the witnesses, are wholly unreliable as measures of operating "efficiency", whatever that term as used by the witnesses may signify. The Coast

[11] T. C. Maurer, traffic manager for the Jacksonville Chamber of Commerce, intervener, also testified as to an investigation made by him on the same subject. His study was based principally on the study introduced in evidence by McWilliams, supplemented by additional Commission data for the year 1943. His conclusion was the same as those of the other two witnesses.

Line objects to the use of the period 1936-40, as not indicative of present conditions particularly in view of the subsequent heavy rehabilitation expenses of the Coast Line. It also contends that a later period would be more indicative of relative efficiency since demonstrated ability to handle the heavy war time traffic is the better measure. Among other Coast Line criticisms of the studies are the dissimilarity of the two roads. The Coast Line states that it has relatively more light density mileage than the debtor and performs more kinds of transportation. In rebuttal a witness for the Coast Line presented another study prepared in the same manner as the Ayers and McWilliams studies which indicated that the Western Pacific Railroad Company during the 1936-40 period was operated more efficiently than the Atchison, Topeka & Santa Fe Railway Company. The witness asserted that this shows the absurdity of the results indicated by the Ayers and McWilliams studies but admitted on cross-examination that other than as shown by his study he had no knowledge of the relative operating efficiency of the two railroads. The St. Joe Company draws a distinction between relative earning power of two carriers and relative operating efficiency as disclosed by a study of their operating expense statistics.

The respective positions taken by the Coast Line and the St. Joe Company on the question of operating efficiency were plainly stated by counsel at the hearing as follows:

> Mr. Bourne (principal counsel for the Coast Line): We do not take the position, and have never taken the position, that the Florida East Coast is not an efficiently operated railroad today for an independent railroad. Our position is that a single-line operation of the two roads would be in the public interest.
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> Mr. Turney (principal counsel for the St. Joe Company): And our position is, and these exhibits are intended to show that under independent opera-

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tion as a single railroad it was and would be operated more efficiently than as a part of your system.

Summarizing, from a review of all the evidence on the subject, the Commission should find that betterment of service to the public, if any, resulting from a unification of the two properties would be slight and that, insofar as ability to furnish adequate transportation service to the public is concerned, operation of the debtor's property by either the Coast Line or its operation as a company not controlled by another carrier will be compatible with the public interest.

Prospective savings from unification.—The amount of savings in operating expenses expected to result from a merger of the two companies was a subject of much evidence and wide disparity of opinion. It is admittedly a matter not susceptible of exact determination nor would the greater part of any prospective savings be realized within the immediate future. The St. Joe Company takes the position that the direct savings would be relatively small and would be more than offset by a lowered efficiency in operation. Another question is the proper method of apportionment of savings between the Coast Line and the debtor as a factor in determining fair and equitable treatment in a reorganization of the creditors of the debtor. This question will be referred to in a later discussion of the sufficiency of the Coast Line plan's treatment of creditors.

The principal ultimate savings doubtless would result from a unification at Wilmington, N. C., of the executive and supervisory forces of the two carriers, involving the abandonment at St. Augustine of all the general offices of the debtor. This saving is estimated by the Coast Line at between $400,000 and $500,000 per year, no details being furnished in view of the fact that the Coast Line plan contemplates a general retention of present personnel of the debtor including both officers and employees. Such savings as would be realized ultimately would come about

mostly through voluntary transfers, deaths, retirements and resignations. The St. Joe Company offered no rebuttal evidence to this general estimate of savings but, as will be later referred to, comments upon it in its brief, as being excessive, in view of the fact that the combined traffic and general expenses of the debtor in 1940 did not exceed $765,000.

One of the most contested questions is the amount, if any, of savings which would result from an abandonment of the debtor's Bowden interchange yard at South Jacksonville and consolidation of the interchange with the Coast Line at the latter's Moncrief Yard at Jacksonville. The Coast Line estimates the eventual savings at $125,972 a year, comprising $38,832 savings in pay roll of yardmasters and clerks based on 1944 expenses and $87,140 in wages of yard enginemen and yard trainmen, plus savings in fuel and supplies for 1642 switch engine "tricks", and after subtracting the estimated cost of operating the debtor's freight trains over the additional 11 miles into the Coast Line's Moncrief yard. The St. Joe Company in a detailed analysis of the claimed savings concludes that there would be some comparatively slight "potential" savings in personnel which would be much more than offset by an actual loss from inferior supervision of yards by Coast Line management. It points out that the business at Moncrief yard increased 56 percent in volume between 1940 and 1944 but that instead of the unit cost per car declining, it actually increased from $1.47 to $1.57 after allowance for the increased cost of labor and materials. One factor offsetting the savings claimed by the Coast Line in the substitution of road movement for switching between Bowden and Moncrief yards would be the cost of additional switching required in the movement of cars from Moncrief to the Seaboard connection and to the Jacksonville station.

In 1934, the debtor and the Coast Line investigated the feasibility of consolidating these yards. The officers conducting the investigation unanimously recommended against

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it. In 1937 another study was made and the previous findings reaffirmed. The Moncrief yard was at that time found inadequate to handle the increased business efficiently. While the shops at Moncrief have been modernized and enlarged since 1937, at a substantial cost, the evidence is not conclusive that the other yard facilities have also been sufficiently amplified. The two yards can be consolidated in the future without merger of the companies if each of the companies shall later agree to enter into a joint-facility contract. In such case, however, it is reasonable to assume that the particular advantage to each carrier to be derived from such an arrangement would be the carrier's controlling consideration in agreeing to it.

The Coast Line estimates that a unification of operations of the Coast Line and debtor's freight stations at Jacksonville will save $103,200 a year. As already stated, these stations are at present located in the same building. There is no evidence that the present duties of the employees of both companies do not now fully occupy their time or that these duties will be lessened in any material degree in the event of consolidation. Very little of the work now performed by them is of a nature that could be dispensed with if the operation of the stations were unified. The Commission should find that little, if any, savings would be realized from unification of these facilities other than such as would result from the elimination of some supervisory officers.

The Coast Line estimates that other eventual savings, of $94,582 a year, would follow a coordination and consolidation of off-line traffic offices of the two carriers. The St. Joe Company criticizes this estimate as based on an unsupported assumption that practically all the debtor's outside traffic agencies can be abolished. It contends that a study and consideration in detail of "the work of the employees proposed to be eliminated and how that work is to be done by the merged company" would not support the assumption. The St. Joe Company further contends that, if the present traffic agencies of the Coast Line are providently operated,

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the addition to their present duties of the work performed by the debtor's agents, which involves problems peculiar to the debtor, will result in the merged company being required to augment its staff to an extent approximately equal to the debtor's present force. In this connection the St. Joe Company points out that the Coast Line at present maintains separate outside traffic agencies for its subsidiaries and affiliates. The Coast Line counters with the assertion that such separate agencies are in connection with subsidiaries which are separately operated and in maintaining the separate offices it follows the usual practice. The Coast Line plan contemplates a merger of the debtor with it and no separate operation.

The remaining principal savings expected by the Coast Line to result from a merger involves a unification of the two purchasing departments. The Coast Line estimates these savings at $200,000 a year, one-half of which would be realized from a lower cost then that now paid by the debtor in acquiring and treating its ties and timbers. A considerable part of the savings would represent elimination of present off-line transportation charges since most of the debtor's ties would be purchased along the Coast Line right-of-way. However, the transportation of the ties and timbers to the debtor's line would still have to be performed so the saving in that respect would seem to be more a matter of bookkeeping than a real economy. Since the base price of green ties is at present the same for both roads the only other probable saving would be in treatment costs. These are somewhat higher at present for the debtor which has its ties and timbers treated in a commercial plant while the Coast Line owns and operates its own plant. Any saving in this respect would be less than claimed by the Coast Line if interest on investment and depreciation of the plant were calculated in arriving at the Coast Line treatment cost.

Other savings expected by the Coast Line to result from a merger are (1) $50,000 a year from a consolidation

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of the debtor's storehouse at Bowden with the Coast Line's Jacksonville storehouse and a reduction in the activities of the debtor's St. Augustine storehouse, and (2) $50,000 a year from a reduction in inventory and handling costs including a return on the investment in the inventory. As to (1) the conclusion should be reached that the only tangible savings, as in the case of the Jacksonville freight stations, would be from ultimate elimination of some supervisory officers and, as to (2), that only about one-fifth of the $765,000 reduction in inventory claimed by the Coast Line would be realized, which would proportionally decrease the expected savings.

From a review of all the record on prospective savings from unification of the two railroads the Commission should find that some economies would result eventually through an ultimate decrease in the number of employees and, to a minor degree, in some of the other respects enumerated above. The estimates of the amount of total savings range from about $900,000 or $1,000,000 as claimed by the Coast Line to less than $350,000 a year as estimated by the St. Joe Company. The record is not sufficient to permit a definite conclusion as to the amount of eventual total savings but it is clear that it would be less than the total estimated by the Coast Line and that the principal item would be the consolidation at Wilmington, N. C. of the general offices and executive forces of both carriers. The effect upon the city of St. Augustine, Fla. of an elimination of the debtor's general offices now located at that point will be discussed hereinafter.

Interests of the debtor's employees.—A considerable portion of the record is devoted to evidence in respect of the effect upon the debtor's employees of a merger of the debtor with the Coast Line. The Railway Employees Executive Association intervened in opposition to a merger, and the general chairmen of the various railroad brotherhoods testified at the hearing. The Brotherhood of Railroad

Trainmen intervened separately and also offered testimony opposing a merger.

The objections of the employees centered principally on their apprehensions concerning (1) loss of jobs, (2) loss of seniority rights, (3) loss of pensions, and (4) displacement from their present homes, particularly with regard to the debtor's employees located at St. Augustine.

The assurances given by the Coast Line of protection of the debtor's employees under the terms of the Washington Job Protection Agreement and its other assurances to the extent that it was able to make at the time, have been hereinbefore recited in the description of the Coast Line plan.

The problem of protection of employees is ever present in the case of consolidation or merger of operations of two railroads. In many cases the problems have been solved in ways apparently acceptable to the parties concerned. While a merger in this instance may offer obstacles of unusual difficulty, especially with respect to the necessity of a considerable number of the debtor's employees being required to move their homes at a time of severe shortages of living accommodations, it is reasonable to expect that some equitable arrangement can be reached in the event a merger is approved even though certain immediate hardships may have to be endured by some of the debtor's employees. These difficulties should not prevent approval of a merger if otherwise it is found to be necessary in the public interest and an equitable feature of a plan of reorganization.

However, any plan approved by the Commission which contemplates a merger should include a provision that, as a condition of approval of such merger, the Commission must require a fair and equitable arrangement to protect the interests of the railroad employees affected, as required by law.[12]

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[12] See *St. Louis S. W. Ry. Co. Reorganization*, 252 I. C. C. 325, 366, and *Chicago R. I. & P. Ry. Co. Reorganization*, 249 I. C. C. 297, 326.

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Representations of Shippers, Communities, and Public Representatives

The record shows conclusively that there exists at this time among the shippers of freight and among the communities on the east coast of Florida a prevailing sentiment that an independent operation of the debtor's properties will be in their best interests. [A considerable number of witnesses was called by the Coast Line in support of a merger but these witnesses mostly resided along and were directly served by the lines of the Coast Line. Only a negligible number were shippers over the debtor's line.] [The 88 witnesses who testified for the St. Joe Company in this phase of the proceeding in support of independent operation of the debtor were practically all residents of the east coast and shippers over the debtor's line.] Many of the St. Joe Company witnesses were officers or authorized representatives of their respective counties, cities, or towns, and testified to the positions taken formally by their communities in resolutions of county boards, city councils, chambers of commerce, etc. Many more witnesses would have been called by each of the parties, had not a necessary limitation of time and expense of the hearing required the imposition of reasonable limits on the number of such witnesses offering more or less cumulative testimony.

The witnesses for the Coast Line in favor of the merger testified generally that they considered it would result in better service, and a few of them expressed dissatisfaction with the debtor's service.

The St. Joe Company witnesses were convinced that a separate management of the debtor's line would be more sympathetic to the transportation needs and problems of the east coast of Florida and would be in a better position to foster its special interests than would the management of the Coast Line system with its divergent interests and extensive mileage throughout the southeast. Many of the witnesses considered the service now performed by the

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debtor better than that of the Coast Line and a pronounced opinion seems to exist, despite the Coast Line's assurances to the contrary, that the Jacksonville gateway for shipping north, east, and west either would not be kept open in the event of a merger of the debtor with the Coast Line or that coercion would be exerted by the Coast Line on shippers from the debtor's line to preserve to the Coast Line its long haul. In either case the witnesses felt that the result would be a virtual exclusion or substantial decrease in the use of routes involving hauls by other carriers beyond Jacksonville. Some of the witnesses feared that a monopoly of Florida transportation would be obtained by the Coast Line and that the activities of the east coast ports would be hampered.

This latter point of view is expressed by the Greater Miami Traffic Association, intervenor, in connection with a discussion in its brief of the effect of control of the debtor by the Coast Line on continued growth of lower east coast ports, particularly Port Everglades and the Port of Miami. The association asserts that real competition exists between these ports and Port Tampa on the west coast, which is served by the Coast Line and which is about 195 miles closer by rail to Jacksonville. The association insists that, while the Coast Line, upon acquiring the debtor, might be friendly to the lower east coast of Florida, it is to be expected that the Coast Line would not be interested in maintaining the present parity in rates between Miami, Port Everglades and Port Tampa because of the shorter rail haul and the Coast Line's large investment at the Port of Tampa.

Similarly, the Jacksonville Chamber of Commerce, intervener, fears that its port would be adversely affected if the Coast Line acquired the debtor. It believes that the Coast Line would then tend to discourage water shipments from north Atlantic ports to Jacksonville, thence via debtor's line to Florida east coast points. This chamber of commerce asserts that it would be to the interest of the Coast Line to favor the Port of Savannah, which is on its through

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line northward from Jacksonville, in order to obtain the longer haul. At present the debtor as an independent carrier with its northern terminus at Jacksonville maintains water-rail tariffs between north Atlantic points and lower Florida east coast points.

While apparently all communities along the east coast of Florida favor independent operation of the debtor's line, certain of them make special representations in support of their positions. Ft. Pierce is the principal shipping point of the Indian River citrus growing section of Florida which comprises the territory lying roughly between Stuart on the south and Titusville on the north. Ft. Pierce is located in St. Lucie County and both the city and county intervened in this proceeding in favor of independent operation of the debtor's line. The Indian River section is served only by the debtor. The Coast Line serves a much larger citrus producing area lying to the west and in the central part of Florida. Ft. Pierce and St. Lucie County believe that, since the latter territory produces a much greater tonnage and since the Coast Line in serving it is subject to competition, the Coast Line, if it acquired the debtor's line, would still favor the central and west coast sections to the detriment of the Indian River district. Furthermore, Ft. Pierce is at present a division point on the debtor's line and the city is apprehensive that the 75 to 100 railroad employees who live there might be displaced in the event of a merger.

New Smyrna Beach is also located on the east coast of Florida between Palm Beach and Jacksonville. Its principal concern is that reductions in railroad personnel and facilities would be made in spite of the Coast Line's expressed intention not to abandon any of the New Smyrna Beach railroad facilities. This community points out that the assessed value of the debtor's property at this place is $590,178, amounting to one-tenth of the total assessed value of all property in the city and that the debtor paid taxes in 1945 amounting to $10,227.65. It also asserts that the debtor is the largest user of city utilities and that 368 of its em-

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ployees reside in the city, of whom 163 own homes and 205 others maintain households.

St. Augustine and St. Johns County, in which it is located, also protest the acquisition of the debtor by the Coast Line. St. Augustine, the county seat, has the principal shops, general offices and hospital of the debtor. About 900 railroad employees live there and with their dependents approximate one-third of the 12,500 inhabitants of the city. The debtor maintains the principal pay roll and is the largest taxpayer. This community contends that the proposed elimination of the general offices of the debtor at St. Augustine upon merger with the Coast Line would be a catastrophe to the city and surrounding territory.

In answer to these representations of opponents of a merger, the Coast Line refers to its assurances that the Jacksonville gateway will remain open in the event of a merger and asserts that in such case it will be to its advantage to furnish the best possible service to shippers located on the debtor's line in order to obtain and justify through routing over its own line. The Coast Line further contends that a merger will not lessen existing competition since it will be an "end-to-end" merger of a relatively small road with a strong trunk line between which no competition of parallel lines exists. Coast Line contends that a merger will constitute a logical and natural extension of its line into a section of Florida which is not served by it at present and in which competition now exists from Palm Beach southward to Miami between the debtor and the Seaboard. A merger of the Coast Line and the debtor would result in the Coast Line then having a through lien competitive to the Seaboard the entire distance from northern points to Miami. The competition between it and the Southern Railway Company would remain as at present.

The Coast Line further asserts that the west coast of Florida, although part of the same governmental unit as the east coast, does not constitute a part of a same transportation unit and that it is purely artificial to combine the

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two sections in estimating the extent of transportation monopoly in Florida. In any event, it contends that a merger with the debtor would result in the Coast Line "system" having only 51.48 percent of the total tons of freight transported in Florida based on 1940 figures, as compared with 34.38 percent carried by the Seaboard. Included in the 51.48 percent of freight which the Coast Line system would carry is that transported by the L. & N.

As to the alleged detriment to the east coast ports in the event of a merger and any lack of incentive to develop the east coast, the Coast Line's vice president in charge of traffic testified that the Coast Line will, in case of a merger, continue its present policy of seeking to develop to the utmost all its territory without discrimination. He further stated that the Coast Line, in cooperation with the debtor, has sponsored and assisted in obtaining export and import rates favorable to east coast ports and that its interests in that direction would be increased rather than diminished if his company were permitted to serve those ports with its own rails.

The witness also stated that in normal times 95 percent or more of the export and import tonnage via Tampa and Port Tampa consists of phosphate rock out-bound and petroleum products in-bound; that proximity of the phosphate mines to Tampa makes it unlikely that an export movement will develop via East Florida ports, but that an important import movement of petroleum and petroleum products will continue in the future as in the past through both east and west coast ports. As to the shorter rail haul between Tampa and Jacksonville than from south east coast ports to Jacksonville, the witness claims that the resulting greater divisions of the through rates would be an added incentive to the Coast Line, in the event of a merger, to see that there would be no discrimination against Miami and that an independent debtor line unaided would be handicapped in the matter of obtaining rate adjustments.

As to the effect on St. Augustine and St. John's County of displacement of railroad employees by elimination of the debtor's general offices there, the Coast Line minimizes the number of employees affected and the effect upon the community of the resulting loss of taxes. It asserts that if the people of St. Augustine are successful in the development of tourist traffic the effect of a unification of the Coast Line and the debtor will not be as serious as they fear.

In general the Coast Line asserts that the prevailing sentiment of residents of the Florida East Coast against the merger is not based on valid reasons. It believes that it is partly induced by "the potency of the name duPont although none of the trustees under Mr. duPont's will is a duPont by blood"; partly by the belief that the east coast needs capital and can obtain it from the duPont trust and partly by a preference "always entertained by some" for a small industry or railroad. [The Coast Line also charges that the sentiment has been induced by misleading and effective propaganda of the duPont interests and that such a sentiment is not a measure of public interest. The record indicates that propaganda has been resorted to by both parties.]

Four congressional representatives of the people of Florida have expressed their views in respect of the proposed merger. These are Senator Charles O. Andrews, whose statement of views was read into the record at the hearings; Senator Claude Pepper, who filed a memorandum in favor of the merger and also participated in the oral argument before the Commission to urge a reopening of this proceeding; Representative J. Hardin Peterson, who urged the reopening, made a statement at the reopened hearings, and filed a brief in favor of the merger; and Representative Joe Hendricks, who expressed his views in opposition to the merger, by letter addressed to the chairman of the Commission.

Many of the arguments for the merger advanced by Senator Pepper have been covered by previous discussion

n this report and do not need to be repeated. He particu-
rly warns that, in his opinion, there will be a grave danger
o the interests of the people of Florida if control of the
ebtor's line is permitted to be transferred to the large
nancial interests of the duPont estate, which he states is
ominated by Edward Ball. In this connection Senator
epper draws a parallel with the situation in *Construction*
y Piedmont & Northern Ry., 138 I. C. C. 363. In that case
he applicant applied for authority to extend its line. Its
pplication was supported by all parties except the compet-
ng railroads. The Commission denied the application on
he ground that the extension would constitute an unneces-
ary duplication of existing lines, which adequately served
he territory. In the course of its opinion the Commission
ound that the Duke interests would exercise effective con-
rol of the applicant and referred to that situation as aggra-
ating the competitive nature of the enterprise.

Senator Pepper calls attention to the following state-
ent in the concurring opinion of Commissioner Eastman:

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> If there were need for strengthening this conclusion, such need would be supplied by the fact that this proposed new railroad is closely affiliated with powerful private industrial interests in the Carolinas. The evils of inter-relation between transportation lines and industries which they serve are manifest. Such arrangements breed privileges and preference and run counter to the spirit and I believe also, in many cases, the letter of the law. There are enough at present without adding to the sum total, and I trust that we shall soon be able to test the legality of existing interrelations of this character.

Senator Pepper urges that the same considerations ap-
ly in the instant case. He contends that control of the

debtor by the St. Joe Company would violate the spirit if not the letter of the commodities clause of the Interstate Commerce Act. These points will be discussed subsequently in this report. Senator Pepper believes that the Coast Line assurances of protection of the debtor's employees in case of merger, coupled with the incorporation of protective features in an approved plan will guarantee against such employees' interests being adversely affected by the merger.

Representative Peterson expresses the belief that successful independent operation of the debtor which serves a restricted territory, is precarious, and that its merger with the Coast Line will assure it a safe permanent future, will be consonant with Congressional policy favoring unifications in order to save weak lines of railroad, and will further the public interest in assuring adequate service. At the hearing, Representative Peterson read into the record a written statement by Senator Andrews of Florida in which the latter states that he had advocated reopening the proceeding for the purpose of taking evidence as to the public interest with respect to future control of the debtor but that the question as to which party should control is one now for determination by the Commission and the court and is a matter upon which he takes no position.

Representative Hendricks states that he had advocated reopening the hearings but that his review of a summary of the evidence coupled with a personal investigation of the situation during a trip to Florida has led him to the conclusion that a transfer of the property to the Coast Line without a public sale would be inequitable, that operation of the debtor's line by the St. Joe Company will be more beneficial to the public than by "absentee owners" having other competitive interests, and that a merger with the Coast Line would adversely affect the interests of the employees of the debtor.

Objections of Southern Railway Company to the merger.—The Southern Railway Company and subsidiary companies collectively known as the Southern Railway

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system and hereinafter referred to as the Southern, intervened in this proceeding, introduced evidence and filed a brief in opposition to a merger of the debtor's property into the Coast Line and in favor of independent operation.

The Southern enters Savannah, Ga., and reaches Jacksonville, Fla., from Hardeeville, S. C., by joint trackage arrangements with the Coast Line expiring December 1, 1999. There is an accompanying traffic agreement with the Coast Line by which free interchange between the Southern and the debtor is assured. The agreement relating to the use of the tracks between Savannah and Jacksonville requires an annual payment by the Southern to the Coast Line of more than $200,000 a year, regardless of its use of the line, maintenance charges being additionally assessed on a user basis. Traffic interchanged by the Southern with the debtor constitutes an important part of the total traffic moving over this line between Savannah and Jacksonville.

The Georgia Southern & Florida Railway, a subsidiary of the Southern, with which it connects at Macon, Ga., reaches Jacksonville and Palatka, Fla., with its own lines and interchanges traffic at both points with the debtor. The Georgia Southern & Florida Railway is a light density line and its interchange with the debtor, mostly of traffic to and from the west is of great importance to it. Other light traffic density lines of the Southern system which are benefited by traffic received by the Southern's interchange with the debtor are the line between Columbia, S. C. and Savannah, Ga. and between Macon and Brunswick, Ga. These lines serve the ports of Brunswick and Savannah and the Southern contends that they are important in affording the ports competitive service.

In general, the Southern system, the Seaboard and the Coast Line are all competitive for traffic moving between Florida and north Atlantic points and for traffic between Florida and the Ohio River and Mississippi River gateways south of St. Louis, Mo. and Cincinnati, Ohio. As to traffic to north Atlantic points, the mileage differences from Jack-

sonville to Washington, D. C. between the routes of all three carriers are so small as to be negligible as competitive factors.

The Southern has a considerable investment at Jacksonville in the St. Johns River Terminal Company, which it owns. It also maintains a large freight and passenger organization in Jacksonville and division freight and passenger offices at Orlando, Fla., and Tampa, Fla., to solicit competitive traffic moving to and from Florida and points north of Jacksonville, Fla., Jesup, Ga., and Savannah, Ga.

The Southern insists that, if the Coast Line is permitted to merge the debtor's line and to wipe out the latter's identity, the Southern will then have only a limited opportunity to secure traffic from the debtor's line even in view of the Coast Line's assurances that all present routes with the debtor will be maintained. If this were not so, the Southern contends, the Coast Line would have little reason to make the investment necessary to acquire the debtor's line.

The Southern urges that the interchange traffic with the debtor which it would lose is not only of great importance to the Southern system generally but especially in supporting the above-mentioned light traffic lines, the operation of which it considers in the public interest.

The Southern at first supported the "Lynch plan", described in the report of January 8, 1945 in this proceeding, whereby the Coast Line would obtain control of the debtor through majority stock ownership. The Southern notified the Coast Line that it would not intervene in this proceeding. Thereafter, it decided to do so in opposition to the merger. The Coast Line asserts that it is not compatible with the public interest to permit the Southern to repudiate its commitment not to intervene, that the latter's interest is wholly selfish and that "the only effect of a unification would be that the Southern would have to work harder to hold the same gross revenues and might suffer some reduction in its earnings, essentially a private matter".

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The Southern justifies its intervention by reason of a change in conditions occurring subsequent to its commitment not to intervene. It had meanwhile decided to continue its controlling interest in the Georgia, Southern & Florida Railway which had a $4,000,000 bond maturity on July 1, 1945, half of which was owned by the Southern, by making available funds to pay the other one-half. It also states that it had no knowledge of the Coast Line's intention of filing a plan of its own at the time of its commitment and that the Coast Line plan contemplates a merger which is quite different from the Lynch plan which would have maintained the identity of the debtor. As to the allegation that its interest in this proceeding is wholly selfish, it asserts that this is a "motive of self interest which is recognized as legitimate", citing *United States* v. *Illinois Cent. R. R.*, 263 U. S. 515, 523.

Future financial stability of the debtor.—The Coast Line claims that the reorganized debtor would benefit from a merger with the Coast Line as it would then be included in a strong company which could lend it adequate financial support in the future if necessary. In this connection, the Coast Line refers to the uncertainty, as stated in the Commission's report of January 8, 1945, which the Commission believes will attend the debtor's future operations because of expected increased air and truck competition, the restricted and non-industrial nature of the territory served and the rise in costs of materials and labor. The Coast Line expresses the opinion that the new first mortgage authorized by the Commission's approved plan will not be a reliable future financing medium since $20,250,000 of bonds would be issued under it immediately upon reorganization.

The Coast Line believes that many residents on the east coast of Florida expect that the trustees of the du Pont trust would come to the aid of an independently reorganized debtor but that such expectations are not justified since the du Pont trustees have made no direct commit-

ments and, being trustees of a charitable trust, their duty is to safeguard the trust estate.

On the other hand, the St. Joe Company alleges that the Coast Line has offered no evidence of record that an independently reorganized debtor would not have assured financial stability, that the evidence shows that the inherent earning power of the debtor will not be increased by merger, that merger is not necessary to provide adequate coverage of fixed charges, that the Commission has found that the contingent charges provided for by its approved plan will be adequately covered by the debtor's future earnings and that it is unnecessary to assure future financing of the debtor's needs if it be reorganized without debt (other than equipment obligations) as urged by the St. Joe Company. Furthermore, the St. Joe Company alleges that the Coast Line is not in a position to insure payment of the debtor's fixed charges after reorganization even if such assurance should prove necessary. It contends that the L & N stock owned by the Coast Line is a free asset which may be disposed of by the Coast Line at any time and, therefore, is not a proper basis upon which to predicate the amount of income available for fixed charges of the reorganized debtor.

The modernization program of the Coast Line in recent years has been hereinbefore described. During the period 1928-1945 the company also has reduced its debt other than equipment obligations from $148,572,930 to $83,514,700, a reduction of $65,058,230 or 43.79 percent, and during the same period has increased its investment in road and equipment by $50,212,466.

During the period 1928-1945,[18] the Coast Line had a deficit in net income account after all charges in 5 of the years, 1932, 1933, 1934, 1935 and 1938. For the entire 18-year period average net income per year amounted to $5,498,054. Had the recent reduction in indebtedness been in effect during the entire period and after deduction of

[18] 1945 partly estimated.

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L & N dividends received on stock sold by the Coast Line (the proceeds of which were used to reduce indebtedness as hereinbefore stated) and after one other minor adjustment, the average net income as so adjusted would have amounted to $7,145,247 per year and there would have been deficits in only 2 years, 1932 and 1935.

The L & N dividends have been a considerable item in the Coast Line's realization of net income particularly in depression years. In 1944, these dividends amounted to $4,176,900, partly offset by interest of $1,400,000 on the Coast Line collateral bonds which the stock secured but which have since been retired. The difference of $2,776,900 represents part of the $16,101,393 total net income realized by the Coast Line in 1944. During the period 1928-1945, the L & N stock has failed to pay dividends in only 2 years, 1932 and 1933, although the dividend rate has at times been less than the $7 per share (on the old stock) paid in recent years.

As hereinbefore shown, the Coast Line still owns 823,427 shares of the new 2-to-1 divided stock on which the current dividend rate is about $3.50 per share. This stock is unpledged.

A balance sheet of the Coast Line as of August 31, 1945, shows total investments of $322,213,986, including $61,381,603 of investments in affiliated companies, current assets of $81,516,796, including cash and temporary cash investments totaling $52,398,526, deferred assets of $2,304,562, unadjusted debits of $3,746,892, and total of all assets, $409,782,236.

On the same date liabilities consisted of capital stock (plus premiums and assessments thereon) $89,544,923, long-term debt $105,542,516, including $20,821,817 of equipment obligations, current liabilities $55,839,129, including accrued tax liability of $37,044,494, deferred liabilities $57,707, unadjusted credits $7,879,559, leaving a surplus of $150,918,402, of which $9,503,115 was unearned and $141,415,287 earned.

For the year 1945 the Coast Line had railway operating revenues of $138,696,621 and railway operating expenses of $123,207,152 (operating ratio 88.83 percent), net revenue from railway operations $15,489,469, railway tax accruals $6,400,000, railway operating income $9,089,469, net railway operating income $5,447,059, other income $5,038,297, including dividend income of $3,458,025, income available for fixed charges $10,192,976, fixed charges $4,656,313, contingent interest $5,028, and net income $5,531,635. It will be noted that while the operating ratio is high, the Coast Line had a very considerable non-operating income and that it earned its fixed charges plus contingent interest 2.19 times.

For purposes of comparison the debtor's income account filed by its trustees for the same year, 1945, shows railway operating revenues $29,571,007, railway operating expenses $20,574,937 (operating ratio 69.58 percent), net revenue from railway operations $8,996,070, and net railway operating income $4,401,728, other income $203,824 and income available for fixed charges $4,337,148. Under the approved plan its interest charges for the year would have been $939,800 all contingent except $28,550 fixed interest paid in 1945 on equipment obligations. These interest charges would have been covered 4.53 times.

The annual interest charges of the reorganized debtor under the approved plan would consist of a small amount of fixed interest, comprising entirely interest on equipment obligations, and $911,250 contingent interest on $20,250,000 of bonds maturing in 75 years. These bonds would be secured by a first mortgage.[14] The Commission has found

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[14] The St. Joe Company has requested a modification of the plan approved by the Commission to permit an option of conversion of these bonds into preferred stock, such issue of preferred stock to be authorized for that purpose alone. If the Commission should approve this modification as hereinafter recommended, and if, as seems probable from the representations of the St. Joe Company, holders of a considerable amount of the bonds should exercise the option, the amount of indebtedness and interest charges of the reorganized company would be materially decreased.

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that the debtor should have earnings of $1,500,000 available in a normal year for payment of interest. The plan approved by the Commission provides for the immediate setting aside of a large sum of cash now in the hands of the debtor's trustees to be devoted exclusively to the cost of a rehabilitation and modernization of the property. It also provides for an annual capital fund which would be available in the future to provide funds for payments of additions and betterments necessary from time to time.

The plan as recommended to be modified herein will further permit the issuance under the first mortgage of not exceeding $1,000,000 (or 2 years' fixed charges of the reorganized company, whichever shall be the greater) of emergency bonds bearing fixed or contingent interest and also fixed or contingent-interest-bearing bonds to refund series A bonds without prior approval by the holders of the series A bonds to be issued in the reorganization. It also permits the future issuance under the mortgage for specified purposes of an unlimited amount of additional bonds bearing either fixed or contingent interest, providing, however, that no fixed-interest bonds for such other purposes shall be so issued without prior approval of two-thirds of the holders of the bonds to be issued in the reorganization who shall be present at a meeting called for the purpose of obtaining such approval. These provisions should be found adequately to cover the debtor's future financing needs.

Both mortgages covering the debtor's property provided for in the Coast Line plan would be closed mortgages and the principal of the bonds to be issued under them would be secured only by the property of the debtor. As to assurances of financial support in respect of payment of the principal of bonds to be issued in the reorganization under either the Coast Line plan or that approved by the Commission or as to assurances of providing new capital funds for the reorganized debtor, no commitments have been made by either the Coast Line or the St. Joe Company.

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On the bases of the record the Commission should find that assurance of future financial stability of the reorganized debtor, does not require a merger of the debtor with the Coast Line.

Other considerations of public interest.—Under the Commission's tentative plan of consolidation of railroads of August 3, 1921,[15] the debtor's railroad was grouped with the Coast Line-L & N group. Professor William Z. Ripley, whose separate report and plan was attached as an appendix to the Commission's consolidation report, recommended, however, that it be maintained as an independently operated carrier since, in his opinion, "it would be a manifest injustice and a hardship to tie this property up to any single system". In its later report on a plan of consolidation issued December 9, 1929,[16] the Commission neither adopted its previous tentative allocation of the debtor's line nor followed Professor Ripley's recommendation, but allocated the debtor to the Southern Railway system.

The Coast Line and Senator Pepper vigorously urge that future operation of the debtor by any powerful, private interest and particularly by the duPont trust, would be detrimental to the interests of the people of Florida. There is no doubt that the duPont trust has large investments and considerable influence in Florida. The extent and nature of these investments have been hereinbefore described. In support of their position, the Coast Line and Senator Pepper refer to the Commission's decision in *Construction by Piedmont & Northern Ry., supra,* hereinbefore discussed. The Commission's attention is called particularly to the part of Commissioner Eastman's concurring opinion, which has been previously quoted. In the Commission's decision in the above case, the Duke interests are described in detail. At the time of the report, the Duke interests owned, controlled directly or indirectly, or had

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[15] *Consolidation of Railroads,* 63 I. C. C. 455.

[16] *Consolidation of Railroads,* 159 I. C. C. 522.

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an influencing interest in 13 textile-manufacturing companies, the Piedmont & Northern Railway, several large power companies, many local public utilities and had large interests in the R. J. Reynolds Tobacco Company, and other tobacco companies, the Aluminum Company of America and the Carolina Standard Gas Products Company.

The extent and nature of the Duke interests were not factors in the decision reached in the majority report of the Commission denying extension of the railroad except as an inference may be drawn from the statement that the competitive nature of the proposed railroad extension "is aggravated by the association of the applicant with large interests which have the power to control or influence much traffic on other grounds than transportation service". The proposed extension of the Piedmont & Northern Railway would have been highly competitive with several parallel railroads all of which protested its construction on the grounds both of the unfair competition which would result from the influence of the Duke interests in obtaining traffic, and the absence of any necessity for the additional service. Commissioner Eastman in his separate expression emphasized the "evils of interrelation between transportation lines and industries which they serve".

In the present case, the circumstances are different. The only parallel competing railroad carrier of the debtor is the Seaboard, which is competitive with that part of the debtor's line extending from Palm Beach, Fla., south to Homestead, Fla. Although the proposed merger might have the effect of strengthening Coast Line's position in its competition with Seaboard for Florida traffic, the proposal does not contemplate the construction of additional competing facilities, as did the proposal in the *Piedmont* case. The Seaboard has neither intervened in this proceeding nor made any representations.

The interests of the duPont trust do not include manufacturing concerns on the line of the debtor and the trust's holdings comprise only one industry of particular conse-

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quence, the St. Joe Company, which is located in another part of the State and is served directly by the Apalachicola, which it controls.[17]

The predominant interests of the duPont trust, other than the St. Joe Company, are in banking and real estate development. The record does not show that it would be a shipper of freight over the line of the debtor other than of construction materials and incidental shipments. It cannot be assumed that the nature of its investments and activities will change in the future, so that it will later become such a shipper over the debtor's line as to violate either the letter or the spirit of the so-called "commodities clause" of the Interstate Commerce Act.

As already stated, any danger of the duPont interests being in a position, if control of the debtor's line is obtained, to stifle competition with parallel competing lines is not present except to the very limited extent stated and the question is not presented as in the *Piedmont* case, *supra,* of authorization of construction of an extension into a competitive field already adequately served by existing facilities. While the St. Joe Company would be in a position to influence routing of shipments beyond the debtor's line this factor would be even more present as to Coast Line influence, were it to obtain control of the debtor.

It appears that the duPont interests have been successful in their investments in the past and the record does not indicate that the growth of their enterprises has been detrimental to the interests of the people of Florida. Such public witnesses as testified at the hearings in this respect expressed themselves as gratified with the interest shown by the duPont trust in aiding in the development of the east coast of Florida.

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[17] See statement of the St. Joe Company, hereinbefore set forth, as to the position it will take in the matter of control of both the debtor and Apalachicola if under the approved plan it should be permitted to acquire control of the debtor.

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The St. Joe Company calls attention to what it refers to as the "pyramidic control", which it claims the Safe Deposit Company holds over the 11,000-mile Coast Line system. As previously stated, the Safe Deposit Company in various fiduciary capacities holds 50.9 percent of the stock of the Coast Line Company which the Commission has found in turn controls the Coast Line within the meaning of the Interstate Commerce Act.[18]

These intercorporate relationships and the extent of interlocking directorships and officers have already been described. The Coast Line denies that either the Safe Deposit Company or the Coast Line Company exercises control over it or in any way attempts to dictate or participate in any matters relating to the management of its railroad properties.

The St. Joe Company alleges that to add the debtor's property to the present "pyramidic" control held by the Safe Deposit Company, which represents an investment at present market values of only about $12,000,000, would be a violation of the principles expressed by the Commission in *Unification of Southwestern Lines*,[19] in its discussion of the propriety of control by the Kansas City Southern Railway Company of the Missouri-Kansas-Texas Railroad Company and, through the latter, of the St. Louis Southwestern Railway Company. Furthermore, the St. Joe Company

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[18] *Atlantic Coast Line R. Co. et al. Purchase, supra.*

[19] 124 I. C. C. 401. At pages 438-9, the Commission said:

This seems too small a base upon which to build such a financial pyramid. Concentration of control within proper limits may be a necessary incident of the grouping of railroads into a limited number of systems. There is, however, a limit to the extent to which it properly may be carried. As we view it, that limit is reached before the concentration has progressed to the extent of 1 to 50. There are too many possibilities of the misuse of power lodged in the hands of a small group of stockholders whose financial interest in the enterprise may be very small in comparison with the enormous assets under their control. However worthy of trust the persons now seeking to acquire this control may be, their successors may not be so worthy. The possibilities of exploitation of the carrier and the use of its resources for the personal benefit of those controlling it is obviously increased as the disparity between the investment representing control and the aggregate assets controlled increases. One such situation and its consequences was considered by us in our report on *Financial Transactions C., R. I. & P. Ry. Co.*, 36 I. C. C. 43.

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alleges that this control of the debtor would be obtained without further investment. In this connection it should be noted that the mortgages to be executed under the Coast Line plan of acquisition of the debtor's line would be divisional mortgages secured as to principal by the properties of the debtor alone. The new stock to be issued under the plan would be stock of the Coast Line but the new preferred stock would be nonvoting. The amount of cash, if any, which would be furnished by the Coast Line from its own treasury is in dispute and will be a subject of later discussion.

As hereinbefore stated, the Commission has made no finding with regard to control by the Safe Deposit Company of the Coast Line. In view of the recommendation as to future control of the debtor's line which will be hereinafter made in this report, it is unnecessary to decide whether, for the purposes of this proceeding, the Safe Deposit Company should be considered to have control of the Coast Line system.

Conclusion.—The foregoing discussion in this report has been devoted to an exposition of the various phases of the public interest involved in the matter of control of the debtor's line, a discussion of the related facts as disclosed by the record, and a statement of the positions taken by the parties. Where it has seemed necessary or appropriate, specific findings have been recommended as to some of these phases. In other instances the facts and contentions of the parties are set forth to be considered in reaching a final conclusion in respect of the public interest involved.

Upon consideration of the record of this proceeding, the Commission should find that a merger of the debtor with the Coast Line would result in no appreciable improvement in transportation service to the public as compared with such service under independent operation; that the eventual savings from such merger would not be such as to warrant consideration of them as a controlling factor and would be realized only by having an immediately adverse effect upon the city of St. Augustine, Fla. and surrounding

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territory; that the predominant sentiment of residents, shippers and communities on the east coast of Florida in the territory served by the debtor is in favor of independent operation of the debtor; that a merger of the debtor with the Coast Line is not necessary to assure the future financial stability of the debtor, or continued adequate, economical, and efficient service and that the nature of the holdings, management and affiliations of the St. Joe Company is not such as to preclude it as a proper party to control the debtor's property.

For these reasons the Commission should find and conclude that a plan of reorganization of the debtor which shall vest control of the reorganized company in the first and refunding mortgage bondholders, with resulting control in the St. Joe Company, will, with provisions for proper recognition of the rights of minority interests after reorganization, be compatible with the public interest.

Fairness of the Coast Line Plan

The principal provisions of the Coast Line plan have been heretofore described. Under the plan, cash would be distributed to the debtor's first and refunding mortgage bondholders on a basis of $133.33 per $1,000 bond, with an alternative offer of one-half that amount plus a prorata disbursement of all "free cash" in the debtor's treasury as of December 31, 1945.

The purpose of the alternative offer, as stated by the Coast Line, is to insure its contribution from its own treasury of at least $3,000,000 of cash. The St. Joe Company and S. A. Lynch, et al. vigorously deny that either the original or alternative offers of cash by the Coast Line would result in any contribution of cash by the Coast Line.

Under the alternative offer, the amount of "free cash" in the debtor's treasury would not include any amount of cash accumulated subsequent to December 31, 1945, and the amount of what is termed "net current assets" as of that date would be determined according to a formula introduced as an exhibit by the Coast Line, and used instead

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of "free cash" on the hand at the time. This amount of "net current assets" would be calculated upon a basis of the difference then existing between current assets (plus the amount of cash held in a special deposit representing cash held in lieu of mortgage property sold)[20] and current liabilities of the debtor after making various adjustments.

These adjustments involve several disputed items, and include elimination from current assets of $3,200,000 of materials and supplies, and deductions of amounts equal to the estimated deferred maintenance $963,100, normal additions and betterments $2,500,000, and extraordinary additions and betterments to be charged to operating expenses $2,683,251, incident to the debtor's improvement program for which a cash reserve is provided in the plan approved by the Commission. S. A. Lynch, et al. contend that the amount deducted for materials and supplies is excessive by $1,200,000 in view of the testimony of its expert witness that $2,000,000 is sufficient for this purpose; that the deductions for additions and betterments charged to operating expenses and for deferred maintenance are not proper, since most of the operating expense items incident thereto would be paid out of current earnings prior to the consummation of the plan, and that the calculations fail to take into consideration any excess cash which may be accumulated by the debtor after December 31, 1945.

These contentions are analyzed hereinafter in connection with a discussion of the amount of cash reserve which should be set aside in the debtor's treasury upon reorganization. Whether or not a larger distribution of cash than is provided for in the Coast Line plan should be made to the debtor's first and refunding bondholders at the time of consummation of the reorganization, the fact remains that, in an independent reorganization, all cash or net current assets of the debtor, whether or not distributed in the

[20] At the hearings, the debtor estimated cash on hand as of December 31, 1945, at $25,384,202 with $693,184 additional held in the special deposit. The amount of cash actually on hand proved to be $26,151,575 and the amount in the special deposit $1,210,129. From this cash, the $12,000,000 principal amount of first-mortgage bonds would be paid.

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reorganization, would benefit such bondholders exclusively. Under the Coast Line plan any excess over $6,000,000 or the amount developed by its alternative formula would be merged with the cash and assets of the Coast Line and would benefit these bondholders to a much less extent.

The new securities per $1,000 first and refunding bond (and unpaid interest accrued to January 1, 1946) offered under the Coast Line plan would comprise $200 principal amount of divisional first-mortgage fixed-interest 3½ percent bonds due 1971, $250 divisional second-mortgage 4½ percent income bonds due 2021, $200, par amount, of new Coast Line $4 dividend non-voting preferred stock, and $133.33 par value of the now outstanding Coast Line $100 par value common stock. The total principal amount of all new securities per $1,000 first and refunding bond is $783.33.

In view of the Commission's finding in its report of January 8, 1945, that the capitalization of the reorganized debtor should include no fixed-interest bonded indebtedness, the Coast Line plan provides an alternative offer of $450 of the 4¼ percent divisional income bonds per $1,000 first and refunding bond in lieu of the $200 of divisional first-mortgage and $250 of divisional income-mortgage bonds. The income bonds under the alternative offer would be identical with those under the original offer except that the mortgage securing then would be a first mortgage instead of second mortgage on the properties of the debtor.

Under the terms of the plan approved by the Commission, each holder of $1,000 principal amount of first and refunding bonds would receive in exchange therefor, together with unpaid interest to January 1, 1946, $450 principal amount of new first-mortgage 75-year 4½ percent income bonds and $450 stated amount of common stock of no par value, plus any cash determined by the court to be distributable.

The capitalization pertaining to the debtor's property under the Coast Line plan according to both of the alter-

native offers (exclusive of equipment obligations) would be $35,250,000, with the common stock having a par value of $100 per share, compared with $40,500,000 under the plan approved by the Commission with the common stock having no par value, but being stated at $100 per share.

Witnesses for the Coast Line testified that studies made by them on several different bases convince them that the entire "package" of new securities offered by the Coast Line would be of greater value than that provided for under the plan approved by the Commission. Their opinions were based on the support which the Coast Line credit would afford the new securities, the earnings of that system (both operating and nonoperating income), its dividend record, the savings which they assert would result from a merger of the two carriers, and the alleged proportionally greater share of the combined earnings of the two companies which the debtor's creditors would obtain as compared to the contribution which would be made by the debtor's line to such earnings.

Of the parties expressing opinions on the specific terms of the offers of new securities under the Coast Line plan, the terms of that plan are advocated by the 5-percent committee[21] with some qualifications as to the amount of cash distribution. The committee's advocacy of the plan is based largely upon a belief that the duPont estate can not be relied upon to protect minority interests.

The terms of the Coast Line plan are opposed by the St. Joe Company, S. A. Lynch, et al. and a witness for Alleghany Corporation testified at the hearing in favor of independent operation. Several individual first and refunding mortgage bondholders testified at the further hearing that they would prefer to receive securities of an independently reorganized company.

A considerable income, currently about $2,880,000 per year, is normally derived by the Coast Line from dividends

[21] It is not clear that the 5-percent committee would advocate the Coast Line plan if the alternative offer of all income bonds in lieu of part fixed-interest bonds should be adopted.

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on the stock which it owns of the L. & N. There is no assurance, however, that these shares of stock, constituting an unpledged asset of the Coast Line, may not be sold in the future if the Coast Line so desires. Consideration of the sufficiency of the support for the new securities offered by the Coast Line in the event of merger should depend primarily on the operating results of the Coast Line. Under present capitalization with a decreased indebtedness and with the modernization program well on its way to completion, these results should be more favorable in the future than in the past.

The average annual earnings (including dividend income) of the Coast Line available for fixed charges for the 5-year period 1936-1940, inclusive, when adjusted by elimination of dividends received during that period on the shares of its L. & N. stock sold in 1945, were $6,166,763. Its present annual fixed and contingent charges are $4,099,493. Adding to the Coast Line average earnings available for fixed charges for this period those of the debtor for the same period, $1,035,311[22], produces a total of $7,202,074.

Under the original proposal in the Coast Line plan, these earnings would produce the following annual return on the securities receivable in the reorganization by each holder of a $1,000 first and refunding bond of the debtor (allowing approximately $45,000 for interest on the debtor's equipment obligations outstanding as of December 31, 1945):

On $200 fixed-interest 3½ percent divisional first-mortgage bonds	=	$ 7.00
On $250 income 4¼ percent divisional second-mortgage bonds	=	10.62
On $200—$4-year preferred stock	=	8.00
On $133.33 common stock	=	2.88
Total	=	28.50

[22] The debtor's earnings available for fixed charges for 1936-40 which are used, are those stated in the report of January 8, 1945, and represent some adjustments of the earnings as reported by the debtor to the Commission.

Under the alternative Coast Line proposal the annual return per $1,000 first and refunding bond of the debtor would be:

On $450, income 4¼ percent divisional second-mortgage bonds	=	19.13
On $200, $4-per year preferred stock	=	8.00
On $133.33 common stock	=	2.76
		29.89

If the debtor were separately reorganized with the issue of new securities proposed under the plan approved by the Commission, and the debtor's average annual earnings available for fixed charges for the period 1936-1940 were realized, each holder of $1,000 of existing first and refunding bonds of the debtor would receive the following annual return after deduction of about $45,000 interest on equipment obligations outstanding as of December 31, 1945.

On $450, 4½ percent income first-mortgage bonds	=	$20.25
On 4½ shares of no-par common stock (earned 39 cents per share)	=	1.76
Total	=	22.01

If the debtor were to realize the estimated future year income of $1,500,000 available for fixed charges, the amount of annual income on new securities receivable in an independent reorganization under the Commission's approved plan would be increased from the above $22.01 to $32.31, since earnings per common share would be increased from 39 cents per share to $2.68 per share.

On the other hand, the annual income per $1,000 of the debtor's first and refunding bonds under the Coast Line's original proposal, if this greater annual income of the debtor were added to the Coast Line's average annual earnings for 1936-1940, would only be increased to $28.97 and under its alternative proposal to $30.36.

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It will be seen that in periods of moderate prosperity for the debtor (and especially so in years of very large earnings), the existing first and refunding bondholders would receive a greater return on the new securities allocable under the Commission's approved plan for independent operation than under the Coast Line plan, while in periods of low earnings the annual return would be greater under the merged operation, providing the combined earnings of the merged companies were sufficient to cover the dividend on the preferred stock offered under the Coast Line plan to the debtor's first and refunding bondholders.

The recommendation has been hereinbefore made that the Commission find that a merger of the debtor with the Coast Line would not result in any material improvement in the financial stability of the debtor and in its ability to finance itself adequately in the future. The voting power of the present first and refunding bondholders of the debtor in the merged company would be insignificant under the Coast Line plan, particularly since the new Coast Line preferred stock, which they would be offered in the reorganization, would be without voting power.

The Commission should find and conclude that the Coast Line has not shown that its proposals for satisfaction of the claim of the debtor's first and refunding bondholders are fair and equitable and afford due recognition of the rights which they would be required to surrender, including the right to control and manage the reorganized company. While the Coast Line has stated that it will be prepared to give immediate consideration to any modification of the Coast Line plan or any other plan which the Commission may approve and which will provide for unification of the debtor with the Coast Line, the situation here involved as disclosed by the evidence, would not justify proposal by the Commission of a modified Coast Line plan which would have the effect of depriving the debtor's bondholders of their right to control the reorganized property and at the same time speculation as to whether its terms would

be accepted by the Coast Line, such acceptance being a necessary condition for the plan becoming effective. Particularly is this true if the Commission should find, as recommended herein, that a merger of the Coast Line with the *debtor* is not required in the public interest.

In view of the foregoing recommended findings and conclusions with respect to the public interest in the control of the debtor and fairness of the Coast Line plan, it is unnecessary to discuss the question of the power of the Commission under section 77 to approve a plan which would merge the debtor's properties with the Coast Line.

Other Requested Modifications

The 5-percent committee, while favoring the Coast Line plan, requests, in the event that plan is not approved, that the plan approved by the Commission on January 8, 1945 be modified in the following principal particulars:

> (1) the entire board of directors of the reorganized company to be elected annually.
>
> (2) The voting trust to be comprised of three trustees, two to be designated by the trustees of the duPont estate, and one by the court to represent the minority interests, the latter voting trustee to have the power to elect at least three of the directors of the reorganized company and the other two trustees to have the power to elect the remaining directors. If the board of directors should consist of more than nine members, the voting trustee designated by the court should have the power to elect one-third of the total number. Any successor to the voting trustee designated by the court should be designated by a judge of the United States District Court for the Southern District of Florida and any successor to either of the voting trustees designated by the trustees of the duPont estate should be designated by them.

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(3) The reorganization committee to consist of three members, the duPont estate to have the right to appoint one member as representative of the majority interest, the court to have the right to appoint one member as its own representative and the court to appoint the third member to represent the minority holders of the first and refunding bonds.

(4) The trustee of the new mortgage not to be a bank controlled by the duPont interests, and should be appointed by the court after a hearing.

(5) A reserve to be set up by the reorganization committee for the contingent tax claim and any moneys not used to satisfy the claim to be distributed to the first and refunding bondholders.

(6) The plan to provide for the issuance of $12,000,000 of fixed-interest 4-percent bonds and $28,250,000 of 4½-percent income bonds all to be secured by the same mortgage.

(7) The mandatory cash reserve for improvements and additions and betterments not to exceed $4,500,000.

The St. Joe Company requests that the debtor be reorganized without any bonded indebtedness but, if this request be denied, that (a) the premium to be paid upon the redemption of the new first-mortgage bonds be eliminated, (b) provision be made for the authorization of an amount of 5-percent preferred stock equal to the amount of authorized first-mortgage bonds, an option to be given to holders of existing first and refunding bonds at the time of reorganization to receive the preferred stock at the rate of one share for each $100 of principal amount of first-mortgage bonds to which they would be entitled under the plan, and further to provide for the right of any holder of the new

first-mortgage bonds at any time during their life to convert such bonds into the preferred stock at the same rate, (c) the preferred stock be preferred as to assets and dividends up to 5 percent which would be cumulative for 2 years, the preferred stock to have full voting rights and participate with the common stock, share for share, in dividends after the common stock in any year shall have received a dividend of $5 per share, (d) that the effective date of the plan be the date of consummation of the plan, subject to the approval of the court, interest on all claims to be computed to such date, distribution of cash to the bondholders to be determined as of that date and the new securities to be dated as of that date, (e) a cash reserve to be established for the contingent tax claim if not determined by date of consummation of the plan, the reorganized company to assume the obligation thereafter to pay the present first and refunding bondholders a like amount of defaulted coupons out of any part of the reserve not required to pay such contingent taxes, the defaulted coupons not to be canceled (although the mortgage will be retired and satisfied) but continue as a contingent obligation of the debtor assumed by the reorganized company, to be secured by and payable only out of the cash reserve, and (f) the voting trust be eliminated.

S. A. Lynch et al. request (a) a change in the provisions of the approved plan as to the effective date so that the determination of the date shall be left to the decision of the reorganization managers with the requirement that it be approximately the date of consummation of the plan and, in any event, not earlier than 6 months prior thereto, (b) that the plan provide for a mandatory distribution to the first and refunding bondholders on the date of consummation of the plan of all excess cash available at the time not required for expenses of reorganization, working capital, contingent tax liability and the improvement and additions and betterments reserve fund, the method of determination of the amount of such excess cash to be determined

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ccording to a definite formula (discussed hereinafter) nd not left to the discretion of the reorganization managers r of the court, (c) that the capitalization of the reorganized ompany consist of outstanding equipment obligations, 12,000,000 of fixed-interest 4-percent bonds, $12,000,000 of ontingent-interest 4½-percent bonds (interest cumulative o 13½ percent), $13,500,000 of 5-percent cumulative (if arned) $100 par-value preferred stock, and 210,000 shares f no-par common stock of a stated value (at $50 per share) f $10,500,000 with a requirement that a reasonable portion f earnings be disbursed as dividends, the total capitaliza- ion (including $2,616,000 of equipment obligations) to be 50,616,000, (d) that the term of voting trust be 10 years, ts membership to consist of 3 voting trustees, 1 to be named y the St. Joe Company, 1 by the Lynch interests, and 1 by he court or alternatively to consist of 5 members, 2 to be lesignated by the St. Joe Company, 1 by the Lynch interests, by the remaining minority of first and refunding bond- olders and 1 by the court, and that the provision giving he voting trustees authority to sell the trusteed stock be liminated; (e) that the provision for designation of reor- anization managers be modified to give the Lynch inter- sts representation, and (f) that the board of directors of he reorganized company consist of 15 members.

Guaranty Trust Company of New York and Arthur E. Burke, trustees under the debtor's first-mortgage, have iled a memorandum in which, although not seeking modi- ications of the approved plan, they reserve the right to ob- ect to any distributions of cash which would impair the bility of the present first-mortgage trustees to pay the ex- sting first-mortgage bonds in full in the reorganization and lso reserve the right, if such a condition should arise, fur- her to express their views.

New York Trust Company, as trustee of the debtor's equipment-trust series D certificates, holds an unsecured laim of $487,418.32 against the debtor upon a deficiency

decree, representing the difference between the amount realized at a judicial sale of the railroad equipment covered by their disaffirmed trust agreement and the full amount of the outstanding certificates secured by the trust agreement, less the amount of a judgment obtained against the former receivers of the debtor's property and paid by them as compensation for their use of the equipment prior to the disaffirmance of the trust and as damages for failure to keep the equipment in repair during such period. This petitioner requests that the approved plan be modified by a finding that free unpledged assets of the debtor are sufficient to pay in cash upon reorganization to the holders of unsecured claims approximately 9.665 percent of the principal amount of all such claims. A similar claim, although requesting cash payment of a smaller proportion of the amount of unsecured claims, has been filed by the Coast Line, holder by assignment of $1,900,000 principal amount, of such unsecured claims as hereinbefore described. The matter of payments, if any, proper to be made upon such claims will be discussed hereinafter.

Certain other modifictions requested by the parties will be referred to in later discussions of the matters to which they pertain.

Effective date.—The St. Joe Company requests that the effective date of the plan be the date of consummation of the plan and S. A. Lynch, et al., urge that the fixing of the effective date be left to determination by the reorganization managers with the requirement that it be approximately the date of consummation and in any event not earlier than 6 months prior thereto. The date of consummation cannot be predicted at this time. As pointed out on brief by S. A. Lynch, et al., there is a possibility that a ruling may in the future be made by the Treasury Department that interest accruing on the old bonds of the debtor between the effective date and consummation date is not deductible by the debtor in its income tax return. There appears to be no

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good reason in this case why the effective date should not coincide approximately with the consummation date. Since, however, it may be advisable that the effective date be fixed somewhat prior to the day of actual consummation of the plan, the Commission should find, as suggested by S. A. Lynch, et al., that the fixing of the effective date shall be left to determination by the reorganization managers, provided, however, that it shall be approximately the date of consummation of the plan and in no event earlier than 6 months prior thereto.

Proposals in respect of an increased capitalization and form of the new capital structure.—In its second supplemental report of January 8, 1945, the Commission reviewed the debtor's earnings available for payment of fixed charges, from 1916 through 1943 and for the first 6 months of 1944. The Commission also referred to the various estimates of prospective earnings available for fixed charges in a normal year, including the trustees' estimate of $1,268,000, which was presented at the first hearing in 1940 in this proceeding, estimates by the duPont estate presented at the same time, and a later estimate of $2,363,000 (before Federal income and excess profits taxes) by an expert witness, Kennedy, of the firm of Coverdale & Colpitts, engineers, who testified for S. A. Lynch et al. at the reopened hearings in May 1944.

Upon the record to the date of the report of January 8, 1945, the Commission found that $1,500,000 represented a fair estimate, so far as it could foresee at that time, of the debtor's probable future annual income available for payment of interest in a normal year, assuming completion of the program of extraordinary additions and betterments.

Since the issuance of the report of January 8, 1945, the record has been supplemented by income statements of the debtor for the entire years 1944 and 1945 and for the first 3 months of 1946.

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For the years 1944 and 1945 the results were as follows:

	1944	1945	Increase or decrease
Railway operating revenues	$31,730,202	$29,571,007	$2,159,195 (decrease)
Railway operating expenses	19,055,811	20,574,937	1,519,126 (increase)
Income available for fixed charges	5,835,252	4,337,148	1,498,104 (decrease)

Following are comparative operating results for the first 3 months of 1946 and 1945:

	January-March inclusive 1946	January-March inclusive 1945	Increase or decrease
Railway operating revenues	$8,223,916	$9,576,582	$1,352,666 (decrease)
Railway operating expenses	5,249,321	5,202,003	47,318 (increase)
Net railway operating income	1,718,763	1,906,420	187,657 (decrease)

At the further hearing in November 1945, witness, W. A. Gordon, also a member of the firm of Coverdale & Colpitts, testified further for S. A. Lynch et al. and submitted a revised "estimated income for a prospective future year", of $1,947,000 available for fixed charges before Federal income and excess profits taxes. His estimate, based on the same amount, $12,550,000, of railway operating revenues, used by Kennedy at the former hearing, is predicated on the theory that reductions in operating expenses, including rentals and taxes, other than income taxes, usually approximate 50 percent of any decrease in revenues.

In the case of this debtor, there was a decrease approximating $19,180,000 from the operated revenues of 1944 to the $12,550,000 used by him for a future year. As shown in the above tables, the actual experience of the debtor for the limited period of 1944-5 and the first 3 months of 1946 does not bear out this assumption, although the witness pointed out that there is usually a considerable "lag" in any decrease in expenses after revenues begin to decline.

At the present time, however, there is the prospect of an immediate increase in wages, and costs of materials are continuing to rise while the operating revenues of the debtor are declining. The decline in operating revenues, how-

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ever, may be at least partially overcome by any rate increase, which may be authorized by the Commission. In the report of January 8, 1945, the Commission stated fully the uncertainties, which, in its opinion, will attend the future operating experience of this debtor. The Commission should find that the record does not justify any increase in its estimate of future normal year income, which is based on an assumption of completion of the rehabilitation and improvement program and after consideration of the economies of operation that may reasonably be expected to result therefrom.

S. A. Lynch, et al., propose a total capitalization for the reorganized company of $50,616,000, which includes the assumption of $2,616,000 of equipment obligations. The capitalization provided for in the plan approved by the Commission, on a comparable basis as to the amount of equipment obligations to be assumed, is $43,116,000. In view of the prospective earning capacity of the debtor in the future as before described, there is no justification for any increase in this capitalization and the Commission should affirm its previous finding.

The plan approved by the Commission provides that the capitalization of the reorganized company, exclusive of equipment obligations, shall be composed of $20,250,000 principal amount of income-mortgage 4½-percent bonds and $20,250,000 principal amount of capital stock. It also provides for the payment in cash of the $12,000,000 principal amount of outstanding first-mortgage bonds.[23]

[23] The court by order entered December 14, 1945 directed the trustees of the debtor to purchase any or all first-mortgage bonds which may be tendered to the trustees at a price of par plus interest to date of payment, the bonds to be purchased for the account of and in the interest of the first and refunding bondholders and to be kept alive and held by the trustees under an express trust for the prorata benefit of the first and refunding bondholders without diminution of the rights of said securities. The first and refunding bondholders are, by the order, subrogated to the extent of their respective prorata interests in said funds to all the rights and interests of the first-mortgage bonds so purchased, and the first-mortgage bonds so purchased (with coupons attached thereto) shall be entitled to the same rights and shall be given the same treatment in any plan of reorganization as other first-mortgage bonds not acquired, are accorded in the plan.

S. A. Lynch, et al., who, as well as the 5-percent committee, request the issuance of fixed-interest bonds, point out that since 1912 there have been outstanding $12,000,000 principal amount of the debtor's first-mortgage 4½-percent bonds, and that interest to date on such bonds has been paid regularly each year when due. They further point out that the plan as formerly approved by the Commission by its report and order of April 6, 1942, as modified by the report and order of August 10, 1942, included provision for $12,000,000 principal amount of fixed-interest bonds. The petitioners also refer to the provision in the former plan authorizing the issuance of an additional $6,000,000 principal amount of fixed-interest bonds under certain conditions. These petitioners assert that in view of the more favorable outlook of the debtor at this time in respect to earnings and in view of cash on hand, the elimination of the issue of new fixed-interest bonds in the reorganization is not justifiable. They further contend that the approved plan is unduly conservative in this respect in view of the provisions for the payment of the existing first-mortgage bonds from cash in the hands of the debtor's trustee and the creation of a special reserve fund from such cash to cover the extraordinary capital improvement fund.

At the time the former plan was before the Commission, there existed the problem of satisfying the priority of the holders of the existing first-mortgage bonds. Under the approved plan that problem is disposed of by the provision for the payment of the existing first-mortgage bonds in cash, and the allotment of all the reorganization securities to the holders of the existing first and refunding bonds. Consequently, even though the estimates of future earnings of the debtor would support the authorization of fixed-interest bonds, there is now no compelling necessity to authorize their issue, and the real question is whether the capital structure provided in approved plan conforms to sound financial principles, provides fair and equitable

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treatment to the first and refunding bondholders, and is compatible with the public interest.

In its report of January 8, 1945, the Commission fully analyzed the supplementary evidence adduced at the reopened hearing in May 1944 in respect of the debtor's later operating results and its probable future income. As a result thereof, the Commission concluded to increase the total permissible capitalization of the reorganized company from approximately $37,000,000, inclusive of equipment obligations, to $40,500,000, exclusive of equipment obligations.[24] This resulted in increasing the total principal amount of bonds to be issued in the reorganization from $16,500,000 to $20,250,000, but, as indicated, the Commission eliminated the fixed-interest feature of the bonds. The new first-mortgage bonds will bear contingent interest at the rate of 4½-percent per annum, whereas the first-mortgage bonds formerly authorized more interest at the rate of 3¾-percent per annum, subject to be increased to 4 percent following any 2 consecutive full calendar years after consummation of the plan in which income available for fixed charges amounted to $1,250,000 or more per annum. Interest on the new first-mortgage bonds will be cumulative up to 45 percent, and the mortgage indenture is unlimited as to the amount of future issue of bonds.

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[24] Contrary to the views expressed by certain counsel, the capitalization approved in the Commission's report of January 8, 1945, constitutes an appreciable increase over that previously approved by the Commission. The plan approved on April 6, 1942, contemplated capitalization of only $35,008,000, plus equipment obligations of $1,992,000, of which $1,800,000 were for purchase of Diesel-electric locomotives under the program then in view. Otherwise, the program at that time contemplated expenditures of only $2,475,000 chargeable to capital accounts, of which 75 percent, or $1,856,000 could be funded under the mortgage provisions into first-mortgage bonds, making a total of $36,864,000 of securities issuable under the plan and for contemplated improvements, or $38,214,000 of total capitalization, assuming 75 percent of the cost of equipment to be funded.

The plan approved on January 3, 1945, contemplated a capitalization of $40,500,000, plus $666,000 of equipment obligations outstanding on that date. In addition the program, as at that time calculated, contemplated the expenditure of $4,929,215 for new equipment, of which at least $3,697,000 would be funded into equipment obligations, making a total capitalization of over $44,000,000.

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Although upon consideration of the record the Commission concluded to authorize an increase in the annual requirements of the reorganized company prior to dividends (exclusive of charges on equipment obligations) from $875,000 to $1,272,500, it was of the opinion that all such charges should be made contingent upon earnings. Its opinion in this respect was influenced by the difficulty and uncertainty which must attach to any attempt under present conditions to predict railway operating revenues and expenses in the future, particularly insofar as this debtor is concerned.

As hereinbefore indicated, all the bonds and stock to be issued in the reorganization will be allotted to the holders of the existing first and refunding bonds. The principal of the new first-mortgage bonds will be secured by a direct first lien, subject only to the liens upon equipment on all the properties and assets of the reorganized company. Furthermore, the plan contains mandatory provisions as to the method by which available net income shall be determined and applied. Minority interests will have representation in the voting trust and on the board of directors. The Commission should find from a review of the record that the value of these bonds will reflect appropriately the probable earning power of the reorganized company and that it would not be to the interest of the reorganized company, its security holders, or the public to authorize the issue of new fixed-interest bonds as proposed by S. A. Lynch, et al., and the 5-percent committee.

The Commission should find that the proposal by the St. Joe Company that the debtor be reorganized without debt (other than equipment obligations) would not accord the first and refunding bondholders in satisfaction of their claim, the proper recognition, to which they are entitled, of the rights which they would be called upon to surrender. Upon satisfaction in cash of the existing first mortgage, as provided in the approved plan, they would become the holders of a first lien on the property and, to the extent

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justified by the future probable earnings of the debtor and consistent with a sound new capital structure, they are entitled to receive satisfaction of a part of their claim in the form of secured indebtedness of the reorganized company. Under the conversion privilege hereinafter recommended such present first and refunding bondholders as so desire may convert into new preferred stock the new first-mortgage bonds allocated to them in the reorganization.

First-mortgage bonds.—The St. Joe Company requests that the Commission modify the approved plan by eliminating the provision requiring the payment of a premium upon the redemption of the authorized first-mortgage bonds. The petitioner contends that the usual considerations underlying such a provision do not apply in this instance because these are income bonds. No objection has been raised to this request. Although the bonds will be secured by a direct first lien upon the reorganized company's property, they will be income bonds. The Commission should find that the approved report should be modified in this respect as requested.

This petitioner also proposes that the plan be modified to provide for the authorization of an amount of 5-percent preferred stock equal to the amount of the first-mortgage bonds to be issued in the reorganization with the option to the present holders of first and refunding bonds at the time of reorganization to receive such stock at the rate of one share for each $100 of principal amount of first-mortgage bonds to which they therwise would be entitled under the plan, and further to provide for the right of any holder of the first-mortgage bonds at any time during their life to convert such bonds into the preferred stock at the same rate. The petitioner further suggests that the preferred stock shall have a par value of $100 per share, and be entitled to a preference in assets to the full par value plus accumulated and unpaid dividends thereon in any distribution of assets or in liquidation of the company, and also to participate equally, share for share, with the common stock

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in any dividends after the common stock shall have received dividends in any year of $5 per share. Dividends on the preferred stock would be cumulative up to $10 per share, and the preferred stock would be fully voting.

While S. A. Lynch, *et al.* also request an issue of preferred stock, the stock as proposed by them, is to be distributed in the reorganization additional to the bonds issuable therein.

With its present holdings, the St. Joe Company will, under the plan, receive a majority of the common stock of the reorganized company, as well as a majority of the bonds, and it states that if its request in this respect is approved, it is hopeful of being able to arrange with the other holders of the bonds for a substantial reduction of the authorized debt by the exercise of the option or conversion privileges. This proposed objective should be found to be desirable, and the appropriate modifications, as proposed by the St. Joe Company, should be made in the plan.

The plan should also provide that the reorganized company shall not without the vote or consent of the holders of at least two-thirds in par value of the outstanding preferred stock, (a) create or permit to be created any mortgage or other lien upon its properties, excepting the new first mortgage, or purchase-money liens, including equipment obligations, upon after-acquired property given for not more than 75 percent of the purchase price of such property, (b) create or issue any bonds, notes, or other evidences of indebtedness maturing more than 2 years from their date, except new first-mortgage bonds and except purchase-money obligations given for not more than 75 percent of the purchase price of after-acquired property, or (c) create any stock ranking, either as to assets or dividends, in priority to or on a parity with the preferred stock. The plan also should provide that the holders of preferred stock voting as a class shall have the right to elect not less than two directors in the event of the default of the equivalent of six quarterly dividends; and the affirmative ap-

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proval of the holders of at least two-thirds of the preferred stock, voting as a class, shall be prerequisite to any charter or bylaw amendment altering materially any existing provisions of such preferred stock.

A request by the St. Joe Paper Company should be approved whereby the provisions of the ninth paragraph of section VII of the approved plan would be modified so as to permit additional first-mortgage bonds, which may bear fixed interest, to be issued in the future to refund any then outstanding series A first-mortgage bonds without the prior approval of holders of such outstanding first mortgage series A bonds.

In the approved plan of January 8, 1945, it is provided that the new 75-year first-mortgage series A income bonds shall bear a 4½ percent interest rate. In view of the decline in interest rates in recent years and the belief of many authorities that the level of interest rates in the future will remain on a considerably lower plane than has prevailed in the past, the question presents itself whether the matter of the interest rate on the new income bonds should not be reconsidered and a lower rate perhaps prescribed.

Upon payment in cash of the debtor's existing 4½-percent first-mortgage bonds as provided in the approved plan, the first and refunding mortgage bondholders will have a first mortgage on all the debtor's property. Their present bonds bear 5-percent fixed interest, and it has been consistently urged by several of the parties that the first and refunding bondholders should receive in the reorganization a substantial amount of new fixed interest first mortgage bonds. The Commission has held, however, that the uncertainties of the debtor's future earning power do not justify the issuance of any fixed interest obligations in the reorganization other than for the purchase of equipment. A similar situation existed in *Minneapolis, St. P. & S. S. M. Ry. Co. Reorganization*, 252 I. C. C. 525, 615, where the plan provides that the first mortgage bonds issued in that reorganization shall bear contingent interest at the rate of

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4½ percent per annum. In that case, the interest is wholly cumulative and the amount of the issue is only $10,000,000. Those bonds are selling currently at a price of about 101. The junior income 4-percent bonds have ranged between 73 and 84 since January 1, 1946, the price on April 30th being 73½.

It is true that in some cases railroad bonds issued in reorganization proceedings have been refunded subsequent to their issue at decreased interest rates. It is doubtful, however, in the present case, whether $20,250,000 of contingent interest bonds of this debtor issued under an open mortgage and bearing interest at a rate lower than that prescribed could be sold in the market at face value at the present time. It is sometimes urged in railroad reorganization proceedings that the interest rates on new bonded indebtedness sought by senior creditors are higher than warranted and result in unjustifiedly diminishing the return which junior creditors are entitled to receive on the junior securities, often stock, receivable by them in the reorganizations. In the instant case such a situation does not exist since the present first and refunding bondholders alone will receive all the new securities, both the bonds and common stock.

In view of the fact that these bondholders, under the terms of the approved plan, are required to relinquish a first lien on all the debtor's property and will receive in return contingent interest bonds in lieu of their present 5-percent fixed interest bonds, the prescribed 4½ percent interest rate on the new income bonds should be held not unreasonable in affording such existing bondholders the equitable equivalent of the rights which they are asked to surrender in the reorganization. The Commission should affirm its previous finding in this respect.

Mandatory distribution of available cash.—The approved plan provides that distribution of cash in the treasury of the debtor to the holders of the debtor's first and refunding bonds, if made pursuant to order entered

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by the court prior to the effective date of the plan shall be deemed to constitute part satisfaction of the claims of such bondholders additional to the treatment accorded them by the plan. It further provides that any such cash distributions, if made pursuant to order of the court entered on or subsequent to the effective date of the plan shall be applied, first, to payment of interest on the new first-mortgage bonds accrued since the effective date and, second, to decrease the total principal amount of new first-mortgage bonds otherwise issuable under the plan to holders of the debtor's first and refunding bonds.

The request of S. A. Lynch, et al., has been recited that provision be made in the plan for a mandatory distribution on date of consummation of the plan to the first and refunding bondholders of all cash on hand at such date in excess of any cash reserved pursuant to the provisions thereof, such distribution to be made prior to consummation. The 5-percent committee states that while it believes that the plan should provide for mandatory distribution of available cash, it does not urge such provision if there be no excessive amount of cash reserved.

In its report of January 8, 1945, the Commission stated that while it could specify the distribution of cash in excess of that reserved, it recognized that, under present conditions, there may be substantial changes in the debtor's cash balances from time to time prior to the consummation of the plan, and that it also recognized the possibility that it had underestimated the cost of the contemplated improvement and rehabilitation and other cash requirements upon reorganization and the amount of cash which should be reserved therefor. For that reason, the Commission believed that it would be to the interest of all concerned, to leave the matter to the discretion of the court, which in reaching its decision would have the benefit of a knowledge of the conditions prevailing at the time.

S. A. Lynch, et al., contend that this is a matter that should not be left to the discretion of either the reorganiza-

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tion managers or the court, and that the exact amount of the cash distribution should be determined according to a definite formula before the plan leaves the Commission.

These petitioners also contend that the Commission should modify the approved plan by eliminating the provisions that any distribution of cash to the holders of the first and refunding bonds after the effective date of the plan in excess of accrued and unpaid interest on the new bonds, should operate to reduce *pro tanto* the amount of such bonds these bondholders would otherwise receive. They insist that it is immaterial whether or not the court enters an order for distribution of cash prior or subsequent to the effective date of the plan provided it relates to cash earned prior to the effective date.

The Commission should hold that these petitioners are not justified in their fear that the court will not order a distribution of cash if it decided that it may properly do so under the circumstances. Indeed these petitioners on brief cite a portion of the court's opinion, which disapproved the first plan approved by the Commission, as establishing the law of "the case" that the first and refunding bondholders are entitled to have distributed as part of the plan, the cash not needed for current and reorganization purposes, contingent tax liability and not required for the improvement program.[25] The plan approved by the Commission should contemplate the distribu-

[25] *In re Florida East Coast Railway Company*, 52 F. Sup. 420, 423. The court referred to the amount of cash on hand at the time and stated:

> This cash represents net earnings of the company, on which the bondholders have a lien. To the extent that it is prudently available, the bondholders are entitled to the benefit of this surplus cash either by having it applied in an equitable manner in satisfaction of their claims, or by having it otherwise definitely allocated by the Commission as a component part of the reorganization plan, so that it may be equitably applied to the best advantage of all concerned. It is too great a sum to be left simply as a floating surplus, in a corporate disposition of which the minority security holders would have little voice. To approve the present plan, ignoring the existence of this fund, would be improvident and inequitable to all security holders, especially to the minority. Such a course would not afford due recognition to the rights of the present bondholders, who have liens on these funds.

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tion of all such cash but the court will be in a far better position at date of consummation of the plan to determine the exact amount so distributable in view of the debtor's cash necessities at that time than will be the Commission at the time of its approval of a plan. In this connection it may be noted that as late as August 10, 1942 (the date of the supplemental report of the Commission finally approving the first plan) it appeared that the debtor's cash on hand was insufficient to meet the cost of the rehabilitation program and that the issuance of several million dollars of additional bonds would be required to supply the needed funds. The Commission should adhere to its conclusion that the distribution of cash in excess of that reserved by the plan should be left to the discretion of the court. However, section IV of the plan should be modified so as to provide that distributions pursuant to orders of the court entered prior to the date of the order of the court directing consummation of the plan, of cash not reserved under the provisions of the plan and which the court finds was earned prior to the effective date, and is not reasonably necessary for financing the reorganized company's operations and for paying the fixed and contingent interest charges accruing under the plan on its obligations after the effective date thereof, shall be deemed to constitute part satisfaction of the claims of such bondholders, additional to the treatment accorded them by the plan. There should be no provision in the plan for distribution by the court of any cash earned subsequent to the effective date.

Cash reserves.—The time elapsed since the Commission's report of January 8, 1945, during which there has been accomplished part of the rehabilitation and improvement program in payment for which $8,700,000 of cash was reserved in the approved plan, together with an increase in the amount of cash on hand in the debtor's treasury makes necessary a revised analysis of the debtor's cash requirements and cash available in the reorganization.

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Several of the parties urge that the Commission base its determination of cash available upon net current assets, which they define as the difference between current assets and current liabilities at the date of determination rather than upon the difference between the amount of cash (plus temporary investments of cash) actually on hand at the time. A comparison of the results which would be obtained by use of the two methods as of December 31 of each of the years 1941-1945 is shown by the following table:

Year	Cash plus temporary cash investments	Current assets less current liabilities
1941	$ 2,360,873	$ 2,694,473
1942	6,772,100	6,517,776
1943	21,225,544	16,661,795
1944	28,370,533	21,907,778
1945	27,324,091	26,352,982

It will be seen that the cash plus temporary investments of cash exceeded the net current assets at the end of each year except 1941. As of December 31, 1945, the difference is not very marked. The parties advocating the use of the net current assets methed urge that it will more truly represent the current position of the debtor since the cash on hand is liable to have sudden fluctuations not indicative of the actual current position at a given time. There seems to be force to this contention and for the present purpose the Commission should adopt this method. Two adjustments should be made, however, in determining net working capital as of December 31, 1945, first, a deduction from net current assets of an amount of $110,000, described by the trustees of the debtor as representing the net effect of current items included in unadjusted debits and credits, and the addition of $1,210,129 in account 704, "Capital and Other Reserve Funds," representing a special deposit of cash in lieu of mortgaged property sold which, upon satisfaction of the debtor's first mortgage, would be payable to the trustee under the first and refunding mortgage for the

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benefit of those bondholders. As so adjusted, net working capital as of December 31, 1945, amounted to $27,453,111. This amount is after provision for unsettled taxes in the amount of $1,366,483 as of that date. In the approved plan $869,816 of cash was included in the total cash reserve of $8,700,000 to provide for settlement of such taxes.

It is clear from the record that in the next 4 years after 1945 the rehabilitation and improvement program should be completed except for payment of annual equipment purchase installments. As to such installments, depreciation accruals during the succeeding years after the 4-year period will exceed the amounts of the payments. Therefore, in determining the amount of cash reserve, a 4-year period commencing January 1, 1946, should be used and the estimate cost of the rehabilitation and improvement program, as furnished by the debtor's trustees, contemplates its completion during that period. These costs have been recomputed since the approved plan was issued and effect given to the higher costs of material and labor expected to be prevailing in the later period.

This program, according to the trustees' exhibit, comprises $6,074,000 for cost of rail which is offset by $2,071,000 for salvage of old rail, making a net cost of $4,003,000; cost of bridges $600,000, stations and terminals $2,450,000, shop machinery $187,500, and other items $963,100. Thus total cash needed for the entire program is $8,203,600. Additionally the estimated cost of the Fort Pierce cut-off is $1,170,000,[26] equipment maturities and cash payments on equipment to be purchased during the period $2,432,501, cost of ordinary additions and betterments $1,000,000, reorganization expenses $600,000, cash working capital $500,000, and payment of first-mortgage bonds $12,000,000.

[26] Certain of the parties contend that this amount should be reduced by $65,000 representing the cost of cross ties which to that extent is already included in material and supply account. If this reduction is made the "net working capital" should be reduced by the same amount so that the net effect would be the same.

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The total of all these deductions is $25,906,101 against which depreciation accruals of $4,780,550 should be credited, the total net deductions thus being $21,125,551. The subtraction of this amount from adjusted net working capital of $27,453,111 leaves $6,437,560.

The above calculation includes the entire estimated cost of the rehabilitation and improvement program, both the amount charged to capital account and that charged to operating expense (except depreciation charges). S. A. Lynch et al. contend that the charges to operating expenses should not be included, since, to a great extent, they will be incurred and paid for out of operating expenses prior to consummation of the plan. This will be true if the earnings during the next 4 years are sufficient to cover such greatly increased operating expenses. In view of the uncertain features previously recited herein the Commission should find that there is little assurance of this. However, to the extent that the estimated cost of normal additions and betterments is included in the program, the cash reserve should be reduced to that extent. This would eliminate $250,000 per year for the next 4 years or a total of $1,000,000, and would leave a balance of $7,437,500 of cash remaining instead of the $6,437,500 above stated. Otherwise, the reserve should include the entire cost of the program. Since the approved plan contemplates that any excess cash at date of consummation of the plan will be ordered by the court to be paid to the existing first and refunding bondholders, these bondholders will incur no sacrifice if the earnings are sufficient prior thereto to meet all costs of the program chargeable to operating expense account, so far as the program has progressed to that date.

One of the debtor's trustees pointed out the probable acquisition by the railroads from the Pullman Company of the latter company's equipment now used by the railroads. He stated that the debtor's share of the purchase price of this equipment would be approximately $312,000. While this amount might be considered as a possible item for which cash should be reserved, its payment is not of suffi-

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cient certainty and the amount is not sufficiently large to warrant its inclusion in the reserve-fund, particularly since the annual charges to rental of equipment income account would be decreased by such acquisition of the equipment. To summarize, the Commission should find that the cash reserve should be of the amount and for payment of items as follows:

Rehabilitation and improvement program		
Equipment maturities and cash payments on purchase of equipment	$ 2,432,501	
Other costs	8,203,600	
	$10,636,101	
Less depreciation accruals	4,780,550	
	$ 5,855,551	— $5,855,551
Construction of Ft. Pierce cut-off		1,170,000
Reorganization expenses		600,000
Cash working capital		500,000
Total		$8,125,551

After payment in cash of the $12,000,000 of outstanding first-mortgage bonds this would leave $7,437,560 net working capital based on the net working capital existing as of December 31, 1945.

All the parties are of the opinion that an amount of $3,438,370 of cash should be reserved in a separate fund to provide for payment of that amount of additional liability for Federal income taxes for the years 1942-5 in the event that the debtor's deductions for accrual of "penalty interest" on its first and refunding bonds shall be disallowed. That question has not as yet been finally determined. The parties all believe, however, that the approved plan should provide that, if this amount shall not be required to be paid or if any part thereof shall be

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unnecessary, any of the reserve not so required shall be distributed to the existing first and refunding bondholders at the time of final determination whether before or after consummation of the plan.

The most practicable manner of providing for such a reserve would seem to be that suggested by S. A. Lynch, et al., as follows:

> Provision should also be made for creation of a reserve for contingent tax liability of $3,438,370. No contingent tax reserve shall be created if the tax liability shall have been finally determined and paid prior to consummation of the plan or if it shall have been determined that there is no tax liability. If the tax liability shall have been determined to be a smaller amount, but shall not have been paid prior to consummation, the reserve shall be such smaller amount. If the tax liability shall not have been finally determined at consummation date, first and refunding bondholders shall receive, in addition to the other distribution made to them upon consummation, evidences of their right to receive a pro rata distribution of the portion of the reserve, if any, not required to be paid in final satisfaction of any tax liability, such distribution to be made immediately following the final determination that the tax liability is less than the reserve. Subject to the foregoing, the reorganization managers shall have authority to determine the form in which the first and refunding bondholders' rights to such distribution shall be evidenced.

The Commission should approve a provision substantially as above.

From all the foregoing it will be seen that, based on net current assets as of December 31, 1945, without estimation of further increase or decrease in excess cash at date of

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consummation of the plan, the balance of cash remaining which could be distributed to the first and refunding bondholders in part satisfaction of their claim would amount to $3,999,190.

Some of the petitioners request that if the provisions requiring the withholding of cash for the purpose of financing expenditures (in connection with the rehabilitation and improvement program) properly chargeable to income account, are permitted to remain in the plan, as above recommended, the provisions of the plan relating to the determination and application of available net income should be modified to provide that such expenditures should be excluded from the computation of available net income. Otherwise, they assert, there will result not only a present withholding from the bondholders of an amount equal to such expenditures, but also an additional similar withholding of income from the bondholders in the year in which actually spent. This contention seems well founded and the Commission should modify the approved plan so as to provide that, to the extent that there are charges to operating expenses on account of this program approved by the Commission's Bureau of Accounts as not representing items properly chargeable to Account 702½A, "Acquisition Adjustments", such charges should be eliminated in computing available net income.

Treatment of unsecured claims.—As hereinbefore stated, the Coast Line, holder by assignment of $1,900,000, principal amount of unsecured claims against the debtor, and the trustee of the debtor's disaffirmed equipment-trust series D certificates, holder of an unsecured claim of $487,418.32 against the debtor, also hereinbefore described, contend that free unpledged assets of the debtor are sufficient to warrant a payment in cash upon reorganization to all holders of unsecured claims.

In its report accompanying the approved plan, the Commission affirmed a finding in its formerly approved

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plan that, even if such assets were found to be not subject to the liens of the debtor's mortgages, their value would be small and impracticable of distribution to holders of unsecured claims in view of the large amount of such claims. For that reason the Commission found that the equity of the holders of unsecured claims not entitled to priority over the mortgages was without value and that such creditors should not be permitted to participate in the plan of reorganization. Other than by a brief filed by one unsecured creditor, holding a small claim, this finding was uncontested until the Coast Line advanced its contention at the reopened hearing in November 1945. Subsequently, on brief, the series D equipment trustee made its similar request for modification of the approved plan.

The trustees of the debtor introduced at the reopened hearing a statement of general unsecured claims (not including the deficiency claim of the first and refunding bondholders) filed with the trustees pursuant to order of the court of June 6, 1941. These are as follows:

Principal amount, open account indebtedness to Flagler Estate (assigned to Coast Line)	$ 400,000.00
Principal amount, open account indebtedness to Florida East Coast Ferry Company (assigned to Coast Line)	1,500,000.00
Principal amount of deficiency judgment on series D equipment trust	487,418.32
Tort claims	16,501.00
Other claims	131,987.71
Total	$2,535,907.03

The debtor's trustees at the reopened hearing introduced a "statement of assets of unadjudicated status as to being free from liens", as of November 13, 1945. These assets, dates upon which the items were acquired, their book values,

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where stated, and their present values as estimated by the debtor's trustees are as follows:

	Date Acquired	Book value	Present estimated value
Real estate			
1. Parcels at East Palatka, Putnam County, Florida	September 29, 1920		$ 250.00
2. Parcel Benson Junction, Volusia County, Florida	February 15, 1911		75.00
3. Acreage in West Martin County, Florida	January 21, 1924		4,000.00
Stocks			
4. 2,960 shares $100 par value common stock Fruit Growers Express Company	February 1920 to January 1945	$118,600.00	296,000.00
5. Railway Express Agency, Incorporated, 6 shares common no-par stock	February 1929	600.00	600.00
6. The Peninsular & Occidental Steamship Company, 7,497 shares $100 par value common stock	August 1907	556,523.66	none
7. U. S. Sugar Corporation, 160 shares preferred stock no-par value and 3 shares common stock	June 5, 1934	32,035.72	12,821.00
Bonds			
8. The Peninsular & Occidental Steamship Company, $1,352,000 first preferred mortgage 6 percent (reduced to 4 percent) series B bonds, due 1962	June 7, 1932	602,001.00	614,047.00
9. Advances by debtor to Railway Express Agency, Incorporated	July 1929 to August 1931	22,999.02	22,999.02
	Date Acquired	**Book value**	**Present estimated value**
Advances			
10. Interest on above advances to Railway Express Agency, Incorporated	August 31, 1945		287.49
Miscellaneous			
11. Other deferred assets—city of Ft. Pierce, Florida certificates of indebtedness dated 6-1-1931	August, 1931		2,892.96
12. Meter deposits with various towns	Prior to March 1931		69.50
13. Scrip—right to enter on certain land	June 1909	959.77	unknown
Scrip—ditto	July 1910	230.75	"
	Totals	$1,333,949.92	$954,041.97

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The trustees' estimated present value of these items as presented at the reopened hearing was not contradicted by any of the parties. The principal items accounting for all but $20,996 of the total present value of $954,042 for all items are

Acquired February 1920 to January 1945, Fruit Growers Express Company common stock	$296,000
Acquired June 7, 1932—The Peninsular Occidental Steamship bonds	614,047
Acquired July 1929 to August 1931—Advances to Railway Express Agency, Incorporated	22,999
	$933,046

The date of the debtor's first-mortgage is June 1, 1909 and of its first and refunding mortgage September 1, 1924.

All of the above assets of any estimated present value were acquired by the debtor subsequent to the creation of the first-mortgage and therefore, are not subject to the lien of that mortgage unless they come within the clauses providing for conveyance of a lien on often-acquired property. The pertinent provisions of those clauses are as follows:

All and singular the entire railroad of the railway company, viz.,

* * * * * *

Also all the lands, tenements, hereditaments acquired or appropriated, or which may hereafter be acquired or appropriated for the purposes of the said railway, and all easements thereunto belonging or in anywise appertaining;

* * * * * *

* * * and all other property, real, personal or mixed now held or which may hereafter be acquired for or in connection with the construction, operation, maintenance, repairing or replacement of the said railway or any part thereof,

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or as convenient or necessary for the uses or purposes thereof; and all rights, powers, privileges and franchises, tolls, rents, issues, and profits connected with or relating to the said railway or to the uses and purposes thereof;

* * * * * *

A further clause of the first-mortgage covers all other property, real and personal, acquired with first-mortgage bonds or the proceeds from their sale.

Specifically covered by a granting clause of the first mortgage are two blocks of shares of stocks of two terminal companies.

As to the first and refunding mortgage the only one of the three principal items of assets enumerated above which were owned at the time of the creation of this mortgage is an unspecified part of the Fruit Growers Express Company stock.

The pertinent clauses of the first and refunding mortgage are as follows:

Part One

All and singular the railroads, railroad property and appurtenances, franchises, rights and privileges of the Railway Company, now owned, and any and all such property hereafter acquired by it, including the properties more particularly described in this Part One, other than the property in this indenture expressly excepted and excluded, and subject to the provisions in this indenture set forth and contained:

* * * * * *

III. All other lines of railroad, extensions or branches now owned or hereafter acquired by the Railway Company.

IV. Any and all rights of way, lands, fixtures, structures, improvements, appurtenances, tenements and hereditaments of whatever kind or description

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> and wherever situated now owned by the Railway Company or which at any time hereafter during the continuance of this indenture may be acquired by or for it, provided that such after-acquired property be acquired for some purpose incident to or connected with the maintenance, operation, construction or improvement of the railroads and appurtenances subject to the lien of this indenture; including • • • and all other things of whatsoever kind in anywise or at any time belonging or appertaining to any and every line of railway at any time subject to this indenture, or to any branch thereof, or provided for use thereon or in connection therewith.

"Part Two" of the granting clauses of the mortgage covers the same two blocks of stocks in terminal companies covered by the first mortgage and "Part Three" covers all after-acquired property of every kind and description acquired by the use of first and refunding bonds or the proceeds from a sale thereof.

Both the Coast Line and the equipment-D trustee contend that, since these assets are not specifically mentioned in the debtor's mortgages, they are not covered by the liens of the mortgages, citing *Liberty National Bank & Trust Company of Savannah* v. *Bankers Trust Company,* 150 F. (2d) 453, 456, and *United States* v. *White Sulphur Springs,* 57 F. Supp. 48, hereinafter referred to as the *Liberty National* and *White Sulphur* cases, respectively.

Since, as above stated, none of the three principal items of these assets was owned by the debtor at the time of the creation of either of the mortgages, with the exception of some undisclosed part of the Fruit Growers Express Company stock, it is obvious that, with such exception, they could not have been specifically mentioned in the mortgages.

In the absence of any evidence that any of these assets were purchased with proceeds from the sale of the mortgage bonds, the question in issue is whether these three assets

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constitute property used on or in connection with, or for the purposes of the railroad or, in the case of The Peninsular & Occidental Steamship Company bonds, constitute extensions of the railroad, as asserted by the St. Joe Company. As stated by the court in the *Liberty National* case, *supra,* which involved a lien dispute arising in connection with a railroad reorganization proceeding, it is necessary in construing the granting clauses of mortgages "to ascertain and give effect to the principal apparent purpose of the parties." This is the well established rule.

In the *White Sulphur* case the nature of the property, viz, resort hotel property of a company the stock of which was owned by the railroad, is dissimilar to the kinds of properties owned by the companies of which the debtor in the present case owns the disputed stock, bonds and advances. Maintenance of the hotel properties in the *White Sulphur* case, as the court said, may have resulted in an increase in the railway's passenger and freight business, but was in no sense necessary to that business.

In the *Liberty National* case, the property in question comprised coal lands from which the railroad obtained coal. The court held that these lands did not come within the after-acquired property clause of that mortgage. The court said

> • • • It is further significant that at the time the Refunding and General mortgage was given, the coal lands were not being, and had not for many years been, operated by the railroad company but were under lease, the railway having no interest in, or control over, the operation or management, and only an option to purchase from lessor a certain portion of their output. It is true, of course, that their leasing could not take the coal lands out of the earlier mortgages if a lien had once attached, nor could the fact that they were already leased when the Refunding and General mortgage was given prevent the mort-

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gage from covering them if the mortgagor had so intended and so provided. But it is equally true that it is of great significance, in arriving at the intent of the grantor, that at the time the Refunding mortgage was made on the railway properties owned and operated by the mortgagor, it did own these coal lands subject to the lease, and it did not by any kind of enumeration include them in the mortgage.

In the instant case, two of the three principal items of assets comprise stock in the Fruit Growers Express Company, which furnishes refrigerator cars to its proprietary railroads, and advances to the Railway Express Agency, which furnishes all the express service of its proprietary railroad companies. These companies are not operated directly by the debtor but as separate organizations perform their respective services which are essential to the debtor's operation and those of the other proprietary railroads. The third and largest item of the three principal items of doubtful assets represents bonds of The Peninsular & Occidental Steamship Company, all the stock of which is jointly and equally owned by the debtor and the Coast Line. It operates passenger, mail, and freight service between Miami, Fla. and Havana, Cuba, and Port Tampa. In applying to the Commission for authority under section 5 of the Interstate Commerce Act as amended by the Panama Canal Act "to continue their joint ownership of and to operate" this company, the two proprietary railroads, the debtor and the Coast Line, represented to the Commission that the steamship company was "but an extension of their respective rail lines." 37 I. C. C. 432. It may be significant in the present case in determining the intention of the parties to the mortgage, to note that they included in the mortgages the two blocks of stocks of terminal companies which were at the time owned by the debtor. From this fact it might be implied that securities

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of such nature were considered to be adjuncts to the railroad and for that reason intended to be included.

The debtor's trustees state that they are advised by their counsel that, in the opinion of counsel, all these assets are subject to the liens of the mortgages with the exception of the scrip as to which item no opinion is given. They further state that, in litigation with State authorities involving taxation of all the 13 items except the scrip, they "have definitely asserted that such properties are subject to the liens of said mortgages."

Upon all the facts, the Commission should find that these three items of assets of contested status represent ownership of, or interest in property of such a nature as was intended to be included within the after-acquired property clauses of the mortgages and therefore are not subject to be used in satisfaction of unsecured claims of the debtor in this proceeding.

Recognizing, however, that a close question may be involved in this recommended finding, and that the court may otherwise construe the effect of the mortgage clauses upon these items, the Commission should include in the plan alternative provisions to be effective in the event that these assets or any of them, shall be held to be free of the mortgage liens. Other than the three items mentioned, it is unnecessary to consider the remaining doubtful assets since their present value is so slight as to render impracticable any distribution of securities or cash to the unsecured creditors in respect of them independently of the three principal items.

In determining the alternative provisions of the plan, the Commission should accept the estimated present values of the various items of "free assets". Interest on the steamship company bonds and Railway Express Agency advances and dividends on the Fruit Growers Express Company stock are being currently paid. In recognition of this fact and of the essential nature of the services per-

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formed by these companies, the Commission should find, that, in the event the court should determine that any of these assets (if of sufficient total amount in value to be reasonably apportionable to holders of allowed unsecured claims) are not subject to the liens of the debtor's mortgages, then, in such case, there shall be applied toward satisfaction of the total amount of allowed unsecured claims a sufficient amount of the entire issue of $20,250,000 of new first-mortgage series A bonds at their principal amount and a sufficient number of shares of new common stock at $100 per share as will together on a basis of one-half bonds and one-half stock equal the total value of such assets so found to be not subject to the liens of the debtor's existing mortgages. Since the value of all of the property owned by the debtor has been considered in fixing the total permissible capitalization a finding that these assets are not subject to the mortgage liens must result in a decrease in the new securities receivable by the first and refunding bondholders in satisfaction of their secured claim.

If all the three principal items of assets shall be found to be "free assets" this would result in the application to satisfaction of allowed unsecured claims about $466,500 of series A first-mortgage bonds and about 4,665 shares of new common stock, which would to that extent, reduce the amounts of these new securities otherwise receivable by the first and refunding mortgage bondholders towards satisfaction of their secured claim.

The alternative provisions should additionally provide that each holder of an allowed unsecured claim against the debtor shall receive his proportional share, one-half in new series A first-mortgage bonds and one-half in new common stock at $100 per share, of the total of all such new bonds and stock so to be applied toward satisfaction of unsecured claims, except that holders of general unsecured claims of less than $100 in amount may be paid cash in satisfaction of their claims, the amounts of cash so to be paid in respect

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of such claims of less than $100 in amount to be in the same proportion to the total of the claims so paid, as the total value of the new securities receivable by the other holders of unsecured claims (with the bonds taken at principal amount and the stock at $100 per share) shall bear to the total amount of their claims.

As hereinbefore stated, the trustees of the debtor estimate that allowed general unsecured claims will total $2,535,907.03. To this amount, in determining the total of all unsecured claims against the debtor, should be added the amount of the deficiency claim of the first and refunding bondholders.

The total amount of principal of the first and refunding bonds is $45,000,000, all of which is in default. From this amount, in arriving at the allowable deficiency claim of these bondholders, should be deducted the value of all new securities receivable by them in the reorganization towards satisfaction of their secured claim. These securities will comprise $20,250,000 of new series A first-mortgage bonds and 202,500 shares of new no-par value common stock less any amounts of each of the bonds and stock which may be found by the court, contrary to the finding recommended herein, to represent the value of "free assets" as the term is used hereinabove. For the purpose of determining the amount of the deficiency claim, the bonds should be considered as of a value equal to their face amount and the stock should be taken at $100 per share.

It is an established rule of law that interest on unsecured claims ceases as of the date of insolvency. *Ticonic Nat. Bank* v. *Sprague,* 303 U. S. 406, 58 Sup. Ct. Rep. 612. In the instant case, the court on August 31, 1931, appointed receivers for the debtor's property in proceedings entitled, "In Equity, Standard Oil Company, a Corporation, Plaintiff v. Florida East Coast Railway Company, a Corporation, Defendant, No. 737—Equity" and on May 12, 1932, that proceeding was consolidated with another action and con-

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tinued under consolidated cause, in Equity No. 757. On January 31, 1941, the court approved a petition filed under section 77 of the Bankruptcy Act.

Since the date of institution of the receivership proceedings, after allowance for interest paid on the debtor's first-mortgage bonds, $3,375,000 of interim payments of interest on the first and refunding bonds, and an estimated total of $400,000 interest on equipment obligations the debtor earned to December 31, 1945, a balance of about $22,600,000 applicable to interest on the first and refunding bonds but not paid thereon. The amount estimated by the Coast Line is $24,500,000.

The question arises whether the amount of about $22,600,000 allegedly earned as interest as aforesaid on these bonds during the bankruptcy period but not paid to the bondholders, should be added to the amount of deficiency in payment of the principal of the bonds in determining the amount of the allowable deficiency claim of these bondholders.

The principle has been adopted by the courts that a secured creditor may apply income derived from his security during the period of bankruptcy against interest accruing on his claim during such period, but that any excess of interest over income shall be lost. *Ex parte Penfold,* 4 De. G. & Sm. 282, *Quartermaines' Case* (1892), 1 Ch. 639, *Sexton* v. *Dreyfus,* 219 U. S. 339, *Louisville Bank* v. *Radford,* (footnote), 295 U. S. 555, 597. In this case, the accrued unpaid interest on the first and refunding bonds (not taking into consideration "penalty interest") exceeds the income as claimed by any of the parties to have been earned by the debtor during the bankruptcy period applicable to payment of such interest.

The equipment trust-D trustee contends that the above amount of about $22,600,000 (to December 31, 1945) does not actually constitute earnings applicable to payment of interest on these bonds since it has been necessary to use it

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in improvements of the debtor's property or that it will be so used in the future, and for payment in cash of the first mortgage, payment of reorganization expenses and retained as necessary cash working capital. This party asserts that, as representing income distributable to the first and refunding bondholders, it is nothing more than a bookkeeping entry and that these bondholders never will receive any such sum as interest on their bonds, especially since the Commission in its approved plan, has provided that cash reserves be established for the purposes above stated.

In this connection, however, it will be noted that it is stated hereinbefore that the amount of excess cash as of December 31, 1945, which might be distributed to the first and refunding bondholders was approximately $4,000,000 and additionally some part or all of the separate contingent tax reserve fund of $3,438,370 may be also distributable to them if a determination of the tax question shall prove that any of the fund is unnecessary. To the extent that such cash payments are derived from income realized during the bankruptcy period and shall be actually received by the and refunding bondholders, they may be applied by them against the greater amount of accrued unpaid interest on their secured claim and should be deducted from the total of income earned during the bankruptcy period, amounting as of December 31, 1945, to approximately $22,600,000, in determining the amount of income earned but not paid during that period.

The Coast Line considers that the entire amount of such income should be added to the deficiency on the principal of the first and refunding mortgage in determining the total deficiency claim of these bondholders. This would seem to be the most equitable solution of the question and the Commission should so find, since such part of the income as has been or will be expended in improving the debtor's property, in paying off the first mortgage and for the other purposes above mentioned will accrue equally to the benefit of holders

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of unsecured claims, as well as the secured claimants, since both classes of creditors will, under these alternative provisions, receive new securities of the reorganized company. The unsecured creditors will thus receive this equal benefit although they are not entitled to receive any of the income earned during the bankruptcy period out of which these expenditures have been or will be made. The Commission should conclude and find that, in the event the court shall find that there are assets of the debtor of substantial value not subject to the liens of the debtor's existing mortgages, such assets should be applied toward satisfaction of the claims of unsecured creditors to the extent, in the manner, and according to the formula above recommended.

Voting trustees, reorganization managers, and board of directors:

The St. Joe Company will own a clear majority (and with affiliated interests probably will control as much as 75 percent) of the stock of the reorganized company. Its proportion of stock ownership may be further increased by conversion into preferred stock of new first-mortgage bonds if it takes advantage of the conversion provisions recommended to be included in the plan. Several parties maintain that the future dividend policy of the St. Joe Company may not, because of the effect of Federal income tax laws on that company's income or for other reasons, always accord with the interests of the minority stockholders of the reorganized company.

In recognition of these possibilities, the Commission should retain in its approved plan provisions affording minority interests a voice in the new management. Cumulative voting by stockholders will provide a certain measure of recognition of the rights of minority interests, but, because of the large proportion of the new stock which will be controlled by the St. Joe Company immediately upon reorganization, the Commission also should affirm its finding that a voting trust should be established.

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Various proposals as previously described in the statements of the modifications requested by the various parties, have been made for changes in the provisions of the voting trust and in the method of appointment of reorganization managers. In this connection the provisions of the plan that the appointments of the voting trustees and reorganization managers shall all be approved by the court are important. The record does not indicate that the provisions of the approved plan with respect to selection of the voting trustees and reorganization managers will not adequately serve the purposes for which they are intended and they should be affirmed. Nor does the record show that any changes are necessary in the provisions of the approved plan relating to the board of directors of the reorganized company and such provisions also should be affirmed.

S. A. Lynch, et al., request that there be included in the plan a provision requiring mandatory dividend payments on the new stock under certain specified conditions. While there may be a possibility, (based, however, on conjecture) that the management of the reorganized company might at some time or times in the future withhold from stockholders dividends which reasonably could be paid to them, a protection of minority interests will be afforded by the provisions above referred to and any further curtailment of the stockholders' rights to manage the company through their duly elected board of directors, would be an unwarranted invasion of their rights. Furthermore, the danger would exist that mandatory dividend provisions, in view of the past history of the debtor's earnings and the uncertainty as to its future, would not be sufficiently flexible to permit the directors under all conditions, which can not now be foreseen, to act in the best interests of the company, the public, and the stockholders. The Commission should not approve the inclusion of such a provision.

S. A. Lynch, et al., also request that the Commission eliminate from the provisions for the voting trust, the authority given the voting trustees to sell all or part of the

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trusteed stock. They state that the provision requirin the Commission's approval of any such sale is not adequat first because the Commission might be persuaded of th fairness of the transaction by previous record of failur to pay dividends or by other considerations that would b difficult to overcome by production of competent evidenc of circumstances concerning which a dissenting minorit might hold deep conviction; and second, the validity of th Commission's reservation of jurisdiction over the terms a between the parties to a sale effected after the terminatio of reorganization proceedings, is questionable. The votin trust is not established exclusively for the purpose of in suring adequate representation to the minority interest but also to provide the mechanics by which it will be possibl for competent interests to negotiate for the purchase of th stock of the reorganized company, should conditions s warrant. The Commission should find that the above stated contention possesses no merit.

Listing of the New Securities on the Stock Exchange

The Commission should find that the request of S. A Lynch, et al. that the approved plan be amended by re quiring that either the reorganization managers or the new board of directors cause the filing promptly upon the is suance of the new securities, or if practicable prior thereto of an application for the listing of the new securities on the New York Stock Exchange, constitutes a refinement in the provisions of the plan not warranted by the record.

Conclusions

Upon further consideration, the Commission should con clude that all the petitions for modification of the report and order of January 8, 1945, approving a plan of reorgan ization for the debtor, should be denied, except to the extent hereinbefore indicated, which excepted matters are summarized as follows:

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1. Section 1 of the plan should be modified to read as follows:

> The effective date of the plan shall be fixed by the reorganization managers with the approval of the court, *provided* that the affective date shall be approximately the date of consummation of the plan and, in no event, earlier than 6 months prior thereto, insofar as the reorganization managers at the time of fixing of the date, with the approval of the court, may be able to determine. All the new securities shall be dated as of the effective date.

2. Section III of the plan should be modified to read as follows:

Cash Reserves

> The reorganization managers shall set aside in a separate fund out of the debtor's cash on hand a sum of not less than $8,125,551 as a reserve to be expended, as directed by the court, for cash requirements upon reorganization and for the improvements and betterments to the property of the debtor specified in the reports of this Commission which are made a part hereof. There shall be credited to such a reserve fund any cash expended for such purposes by the trustees of the estate of the debtor upon order of the court and any part of such fund which may not have been so expended or appropriated at the date of consummation of the plan shall be taken over and held as a separate fund by the reorganized company to be expended for such purposes upon order of the board of directors of the reorganized company.
>
> If, at the time of appointment of the reorganization managers, the tax liability of the debtor in the amount of $3,438,370 with respect to deductions by the debtor from Federal income taxes in former years of interest upon delinquent interest on the

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debtor's obligations shall not have been finally determined, or, if finally determined, shall not have been paid, or, if the tax liability shall have been determined to be a lesser sum and shall not have been paid, then such amount of $3,438,370, or any lesser sum finally determined to be payable, shall be set aside in a further separate fund by the reorganization managers and they shall allot to the existing first and refunding mortgage bondholders evidences of a right to receive, in addition to any other distribution made to them upon consummation of the plan a pro rata distribution of the portion of the reserve, if any, not required to be paid in final satisfaction of any such tax liability, such distribution of cash to be made immediately following the final determination of the amount, if any, of such tax liability. The reorganization managers shall have the authority, with approval of the court, to determine the form in which the existing first and refunding mortgage bondholders' rights to such distribution shall be evidenced.

3. Section IV of the plan should be modified to read as follows:

Distributions of cash in the treasury of the debtor, or any appropriations thereof, which the court finds was earned prior to the effective date of the plan, and is not reasonably necessary for financing the reorganized company's operations and for paying the charges accruing under the plan on its obligations after the effective date, if made pursuant to order of the court prior to the entering of the order directing the consummation of the plan shall be deemed to constitute part satisfaction of the claims of such bondholders additional to the treatment accorded them by the plan approved herein.

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4. The first paragraph of section V of the plan should be modified to read as follows:

> The capitalization of the reorganized company upon consummation of the plan as of its effective date shall consist of approximately the following, the amounts stated being subject to variations under the provisions of sections IV, VII, and X hereof and to the extent, if any, that any equipment obligations are paid or reduced or additional equipment obligations are incurred.

5. The fourth paragraph of section VII of the plan should be modified to read as follows:

> First-mortgage series A bonds in a principal amount not exceeding $20,250,000 shall be authenticated and delivered in the reorganization ratably to holders of the now outstanding first and refunding mortgage 5-percent bonds of the debtor not exercising the options, hereinafter provided, to receive 5-percent preferred stock of the company at the rate of one share for each $100 of principal amount of first-mortgage series A bonds to which such holders would otherwise be entitled. The series A bonds shall be dated as of the date of reorganization, mature 75 years after date, bear contingent interest at the rate of 4½ percent per annum, due and payable as hereinafter provided, and shall be redeemable in whole or in part at the option of the reorganized company, on May 1 in any year, on 30 days' notice, at their principal amount and accrued interest.

6. The eighth paragraph of section VII of the plan should be modified to read as follows:

> The first mortgage shall provide for a sinking fund for series A bonds, the annual payments to be

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made on May 1, beginning on the May 1, of the calendar year following the year in which the effective date falls, and to be equal to one-half of 1 percent of the largest principal amount of series A bonds at any time previously outstanding, if sufficient available net income for the previous year is available for such purpose after the deductions made pursuant to the provisions of the subdivision hereinafter included in this plan and entitled "Determination and application of available net income." Such sinking fund shall be applied to the retirement of series A bonds by purchase in the open market or by call for tender (but in no case at a price exceeding their principal amount and accrued interest) and to the extent not so applied to their redemption as hereinafter provided. Bonds shall be called for redemption by lot. All series A bonds acquired for the fund shall be retained in the sinking fund and interest paid thereon to the same extent as if the bonds were outstanding, such payments of interest into the sinking fund on such bonds to be additional to the regular sinking-fund payments. For the purposes of the sinking fund, series A bonds shall be redeemable on May 1 in any year on 30 days' notice. The reorganized company shall be permitted to deliver to the mortgage trustee in lieu of all or any part of cash payments into the sinking fund, bonds retirable out of the fund, bearing all unmatured coupons, such bonds to be taken at their cost to the company (exclusive of accrued interest), as certified by the company to the trustee at the time of delivery of such bonds, or at the market price at which such bonds are selling on the date of acquisition on a recognized exchange, or at the redemption price on the first day of May in such calendar year, whichever may be lowest.

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7. Section VII of the plan should be modified by adding a new paragraph between present paragraphs 8 and 9; the new paragraph to read as follows:

> Said series A bonds other than bonds held in the sinking fund shall be convertible at the office of the reorganized company at any time prior to their call for redemption or payment by the company, and upon reasonable notice to the company, into shares of 5-percent preferred stock of the company at the rate of one share of 5-percent stock for each $100 of principal amount of such series A bonds.

8. Present paragraph 9 of section VII of the plan should be modified by changing the text beginning with the first proviso and extending to the end of the paragraph, to read as follows:

> *provided,* that no additional bonds shall be issued bearing fixed interest (except "emergency bonds" hereinafter described) if there be outstanding any series A bonds, provision for the redemption of which shall not have been made or proposed to be made by the issuance of such additional bonds, without the prior approval of two-thirds of those holders of series A bonds which have not been called for redemption, who are present in person or by proxy, at a meeting called by the trustee of the first mortgage for such purpose, each $100 principal amount of bonds there represented being entitled to one vote, and *provided, further,* that emergency bonds (hereinafter provided for) may be issued without such prior approval of the holders of series A first-mortgage bonds.

9. Present paragraph 3 of section IX of the plan should be modified to read as follows:

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Available net income for each such income period shall be determined by deducting all fixed charges of the reorganized company accruing during such income period from the income of the reorganized company available for fixed charges for such income period (determined in accordance with this Commission's accounting rules or those of any governmental agency having jurisdiction in the premises at the time in effect, or, to the extent not governed by such accounting rules, in accordance with sound accounting practices); *provided,* however, that to the extent that expenditures incurred in connection with the rehabilitation and improvement program for which a cash reserve is provided herein are charges to operating expenses, approved by the Commission's Bureau of Accounts as not representing items properly chargeable to Account 702½A "Acquisition Adjustments", such charges shall be excluded in computing available net income.

10. Section IX of the plan should be modified by adding a new clause (g) between present clauses (f) and (g) of paragraph 5, and by relettering clause (g); new clause (g) to read as follows:

To any proper corporate purpose of the reorganized company (except dividends on new common stock) including if and to the extent that such dividends are declared by the directors, the payment of dividends upon the preferred stock in respect of such year and of any accrued and unpaid cumulative dividends on the preferred stock, in the event any preferred stock shall be issued and shall be outstanding.

11. Present clause (g), of paragraph 5 of section IX should be modified by relettering it clause (h), and to read as follows:

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To any proper corporate purpose of the reorganized company, including, if and to the extent that such dividends are declared by the directors, the payment of dividends upon the common stock (but only after all accrued and unpaid cumulative dividends upon any outstanding preferred stock have been paid or set aside for payment.)

12. Section X should be modified to read as follows:

There shall be authorized and issued 202,500 shares of common capital stock of the reorganized company without par value which shall be issued in the reorganization pro rata to the holders of the first and refunding mortgage bonds of the debtor.

There shall be authorized not exceeding 202,500 shares of 5-percent preferred stock and so much thereof shall be issued in reorganization as shall be necessary to issue to holders of first and refunding mortgage bonds who elect in writing on or before a date to be fixed by the reorganization managers, to receive shares of such 5-percent preferred stock in lieu of series A first-mortgage bonds to which they are entitled under section VII hereof, at the rate of 1 share of such 5-percent preferred stock for each $100 of principal amount of series A first-mortgage bonds, to which such holder would be entitled under the provisions of section VII. The remainder of the authorized shares of preferred stock shall be held by the company in reserve to be issued from time to time to the holders of series A bonds, except bonds held in the sinking fund, who exercise the privilege of conversion at the rate of one share of such 5-percent preferred stock for each $100 principal amount of first-mortgage series A bonds so converted as hereinafter provided.

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The charter shall provide that the 5-percent preferred stock shall have a par value of $100 per share, shall be entitled to a preference in assets to the full par value plus accumulated and unpaid dividends thereon in any distribution of assets or in liquidation of the company, and shall also be entitled to the payment of, or to have set aside for payment, dividends at the rate of 5 percent per annum out of earnings for any period, after all provisions shall have been made for the payment of interest, sinking funds and capital fund for such period, under the first mortgage and before any earnings for such period are set aside for payment of dividends, or any dividends are declared or paid from earnings for such period, upon the common stock, and such preferred dividends of 5 percent per annum shall be cumulative up to 10 percent, but not in a larger percentage. Shares of such preferred stock shall be entitled to participate equally, share for share, with the common stock in any and all dividends in excess of $5.00 from earnings for any calendar year, paid or set apart for payment on the common stock.

Holders of preferred and common stock shall be entitled to one vote per share of such preferred and common stock on all matters, except that the holders of preferred stock voting as a class shall have the right to elect not less than two directors in the event of the default of the equivalent of six quarterly dividends. Upon the termination of the voting trust provided for in the following section XI of this order, each preferred or common stockholder shall have the right of cumulative voting in the election of directors.

The reorganized company shall not, without the consent or vote of the holders of at least two-thirds in par value of the outstanding preferred stock,

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(a) create or permit to be created any mortgage or other lien upon any of its properties, excepting the new first mortgage, or purchase-money liens, including equipment obligations, upon after-acquired property given for not more than 75 percent of the purchase price or fair value of such property whichever is less, (b) create or issue any bonds, notes, or other evidences of indebtedness maturing more than 2 years from their date, except new first mortgage bonds and purchase-money obligations given for not more than 75 percent of the purchase price, or fair value, whichever is less, of after-acquired property, or (c) create any stock ranking, either as to assets or dividends, in priority to or on a parity with the new preferred stock.

The affirmative approval of the holders of at least two-thirds of the preferred stock, voting as a class, shall be a prerequisite to any charter or bylaw amendment altering materially any existing provisions of such preferred stock.

13. Present paragraphs 4 and 7 of section XI of the plan should be modified to read as follows:

The voting trustees shall have power upon the affirmative vote of a majority in number of shares of owners of the stock of the reorganized company represented by voting-trust certificates outstanding at the time, to sell all or any part of the trusteed stock and in connection with any such sale, to reclassify or alter the trusteed stock on such terms as they may determine.

The terms of such sale and of the alteration or or reclassification of the stock of the reorganized company as aforesaid shall be subject to the approval of this Commission.

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14. Paragraph 2 of section XII should be amended to read as follows:

> Holders of the debtor's first and refunding mortgage 5-percent bonds, series A, not exercising the option to receive 5-percent preferred stock of the company at the rate of one share for each $100 of principal amount of first-mortgage series A bonds to which such holders would otherwise be entitled pursuant to section X hereof, shall receive for each $1,000, principal amount, of bonds held and all accrued and unpaid interest to the effective date of the plan, $450, principal amount, of new first-mortgage 4½-percent income bonds and four and one-half shares of new no-par-value common capital stock.

15. Section XII should be further modified by inserting immediately prior to the last paragraph thereof the following new paragraphs:

> If, however, the court shall find that there are assets of the debtor, not subject to the liens of its existing mortgages, of sufficient value to be practicable of apportionment among the holders of unsecured claims against the debtor, using in such determination of value of such assets the values of the assets as estimated by the trustees of the debtor, then in such case there shall be applied toward satisfaction of the total amount of allowed unsecured claims, determined as hereinafter specified, a sufficient amount of the entire issue of $20,250,000 of new first-mortgage series A bonds at their principal amount and a sufficient number of shares of new common stock at $100 per share as will together on a basis of one-half bonds and one-half stock equal the total value of such assets so found by the court to be not subject to the liens of the debtor's existing mortgages.

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The bonds and shares of stock, which, in such event, are subject to be applied towards satisfaction of allowed unsecured claims, shall be ratably distributed among the holders of such claims, the total amount of which shall comprise the amount of allowed general unsecured claims plus the amount of any deficiency claim allowed by the court on the first and refunding mortgage, the amount of such deficiency claim to be determined according to the principles and formula set forth in the third supplemental report of this date which is made a part hereof.

However, holders of allowed general unsecured claims of less than $100 in amount may, in such event, be paid cash in satisfaction of their claims, the amounts of cash so to be paid to be in the same proportion to the total of the claims so paid, as the total value of the new securities receivable by the other holders of unsecured claims (with the bonds taken at face value and the stock at $100 per share) shall bear to the total amount of their claims.

The Commission should further conclude that the modified plan for the reorganization of the Florida East Coast Railway Company, debtor, approved by its supplemental report and order of January 8, 1945, pursuant to section 77 of the Bankruptcy Act, as amended, should be further modified as herein specified, and that, as thus modified, the plan will meet the requirements of section 77(b) and (3) of that act, will be compatible with the public interest and should be approved.

Attached hereto and made a part hereof is an appendix showing the treatment accorded claimants under the approved plan as herein recommended to be modified, including the distribution of the new securities and the capitalization and annual requirements of the reorganized company.

An appropriate supplemental order should be entered.

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Finance Docket No. 13170

Florida East Coast Railway Company Reorganization Note)

Claim	Class	Principal		No par common stock (at $100 per sh.)	Total new and assumed
(as of 12-31-45).....	II	$ 496,000	$	$ —	$ 496,000
(as of 12-31-45).....	II	170,000		—	170,000
Agreement of March 1-45).....	II	1,949,866		—	1,949,866
Obligations.....	—	(2)		—	(2)
.....	III	12,000,000		—	—
.....	IV	45,000,000	31	20,250,000	40,500,000
.....	I	—		—	—
.....	V	—		None	None
.....	VI	37,500,000		None	None
.....		$97,115,866	$39	$20,250,000	$43,115,866

of plan will be approximately date of consummation and Annual Requirements

med date of January 1, 1947, except on ec

ion	Fixed Requirements	Contingent Retirements
866	(a) $58,552	—
000	—	$ 911,250
-	—	(c) 260,000
-	—	(d) 101,250
866	$58,552	$1,272,500
000	—	—
866	(a) $58,552	$1,272,500

obligations, if any, issued to acquire new eq
g when the plan is consummated will be assu
llowed by the court and unpaid on date of
h.

ction by election of first and refunding bon
k in lieu of first-mortgage bonds.

r's first and refunding mortgage bonds will
nd unpaid interest thereon to the effective
amount of new first-mortgage series A 4½
ares of new no-par common stock.

ns and interest thereon issued in acqui-
ng equipment obligations.

tables are on basis of distribution of entire
000, principal amount of new first-mortgage
unding bondholders to receive 5-percent
plan, holders thereof would have the right at
n, or thereafter, to convert such bonds into 5
te of one share for each $100, principal am

evenues of $13,000,000.

n.

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Summary Accompanying the Interstate Commerce Commission's Report dated April 8, 1947.

INTERSTATE COMMERCE COMMISSION

WASHINGTON

FINANCE DOCKET NO. 13170

FLORIDA EAST COAST RAILWAY COMPANY REORGANIZATION

SUMMARY OF THIRD SUPPLEMENTAL REPORT OF THE COMMISSION

Upon consideration of the plan of reorganization filed by the Atlantic Coast Line Railroad Company for a reorganization of the Florida East Coast Railway Company and the petitions filed by other parties for modification of the plan of reorganization in the above-entitled proceeding approved January 8, 1945, and also upon consideration of the entire record of the proceeding as supplemented at the reopened hearings held in November 1945, the briefs subsequently filed, the exceptions to the proposed third supplemental report of the examiner and the oral argument thereon, the following principal determinations are made in the accompanying report:

(a) The plan approved by the Commission's report and order of January 8, 1945 is modified so that the debtor's properties upon reorganization will be merged or consolidated with the Atlantic Coast Line Railroad Company.

(b) The previously approved provision fixing the effective date as January 1, 1946 is modified so as to provide that the effective date shall be left to determination by the reorganization managers, provided, however, that it shall be approximately the date of consummation of the plan and in no event earlier than 6 months prior thereto.

(c) The plan is modified to contain provisions for the protection of railroad employees affected by the merger or consolidation as contemplated by section 5(2)(f) of the Interstate Commerce Act.

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(d) The plan provides that the existing through routes via Jacksonville, Fla., to and from points now served by the debtor in connection with Seaboard Air Line Railway Company and Southern Railway system shall be kept open.

(e) The maximum permissible capitalization of $40,500,000, exclusive of equipment obligations, with respect to the debtor's property as fixed in the previously approved plan of the Commission is affirmed.

(f) The cash and securities of the Atlantic Coast Line to be allocated to the debtor's first and refunding mortgage bondholders in exchange for their present bonds and the annual requirement with respect to such new securities are as follows (the cash distribution as listed constituting only cash to be contributed by the Atlantic Coast Line from its own funds):

	Total of cash and new securities	Annual requirement	
Cash contributed by Atlantic Coast Line	$ 4,125,000	0	
New Atlantic Coast Line divisional first-mortgage, fixed-interest, 3½ percent 25-year bonds	13,500,000	$ 472,500.00	fixed interest.
		67,500.00	fixed sinking fund payment.
New Atlantic Coast Line divisional income-mortgage 4¼ percent 75-year bonds	7,875,000	334,687.50	contingent.
		39,375.00	interest contingent sinking fund payment.
New Atlantic Coast Line participating cumulative $4 dividend preferred stock	9,000,000	360,000.00	
Atlantic Coast Line present common stock (at $100 per share)	6,000,000	0	
Totals	$40,500,000	$1,274,062.50	

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The cash reserve of $8,700,000 for rehabilitation and improvements and for other cash reserves upon reorganization is increased to $10,725,551 and an additional separate contingent cash reserve of $3,433,370 is established to provide for payment of additional liability of the debtor for Federal income taxes for the years 1942-1945 in case the debtor's accruals of penalty interest on its first and refunding bonds for those years are disallowed, such fund to be distributed *pro rata* to first and refunding bondholders to the extent not necessary for this purpose.

(g) The provisions of the previously approved plan with respect to cash distributions to the debtor's first and refunding bondholders are modified so as to provide for mandatory distribution of all excess cash in the treasury of the debtor as of date of consummation of the plan, which the court finds is not necessary for any of the purposes for which cash shall be used or reserved under the terms of the recommended plan. Cash so distributed will be additional to $4,125,000 of cash to be contributed by the Atlantic Coast Line and shall be deemed to constitute part satisfaction of the claims of the debtor's first and refunding bondholders additional to the treatment accorded them as shown in the above tabulation.

(h) The distribution of the reorganization securities and cash to be contributed by the Atlantic Coast Line is as follows: equipment obligations will be assumed by the Coast Line and otherwise remain undisturbed; the debtor's first-mortgage bondholders will be paid in full in cash; and holders of first and refunding bonds will receive for each $1,000 bond and unpaid interest thereon to the effective date of the plan, $91.67 in cash, $300, principal amount, of Atlantic Coast Line divisional first-mortgage fixed-interest 3½ percent 25-year bonds; $175, principal amount, of Atlantic Coast Line divisional income 4¼ percent 75-year bonds; $200, par amount, of new Atlantic Coast Line participating cumulative $100 par value $4 dividend preferred stock, and $133.33 of present Atlantic Coast Line

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common stock stated at $100 per share. Since the claim of the debtor's first and refunding mortgage bondholders is not satisfied in full and since the Commission finds that there are no assets of the debtor of substantial value not subject to the liens of the debtor's mortgages, the claims of unsecured creditors are found to be of no value and holders of such claims are found not entitled to participate in the reorganization. However, provisions are included in the plan, which will permit participation in the plan to the extent and in the manner specified, by the unsecured creditors in the event the court shall determine, contrary to the finding in the report, that certain assets of the debtor of substantial value are not subject to the liens of the mortgages. The claims of the debtor's stockholders are found to have no value.

(i) Both the new Atlantic Coast Line divisional first mortgage and income mortgage will be secured as to principal only by the properties of the debtor. The interest on the bonds will be a general obligation of the Atlantic Coast Line.

(j) The new Atlantic Coast Line divisional first-mortgage bonds will have the benefit of annual fixed payments of one-half of 1 percent into a sinking fund and will be redeemable on 30 days' notice at their principal amount plus a premium of 2 percent if redeemed during the first 9 years, such premium decreasing by one-eighth of 1 percent on the first day of the tenth year and of each succeeding year so that there will be no premium on redemption in the last year prior to maturity, except that bonds will be redeemable for the sinking fund at their principal amount plus accrued interest. The new Atlantic Coast Line divisional income bonds will be redeemable for all purposes at their principal amount and accrued interest. Interest on the income mortgage bonds will be cumulative up to a maximum amount of 12¾ percent and these bonds will have the benefit of annual sinking-fund payments of one-half of 1 percent contingent upon such payments being

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earned after payment of all fixed charges of the Atlantic Coast Line and the interest on the income bonds.

(k) Dividends on the new Atlantic Coast Line preferred stock will be cumulative to the extent of 12 percent whether or not earned in any year of such accumulation but thereafter only to the extent earned but not declared or paid. No dividends on Atlantic Coast Line common stock shall be paid or set aside for payment nor shall a purchase or redemption by the Atlantic Coast Line of any of its common stock be permitted as long as any accumulated dividends remain unpaid on the preferred stock. In addition to the $4-per-year dividend, the preferred stock will participate share for share with the Atlantic Coast Line common stock in all dividends paid on the latter in excess of $4 per share per annum. The preferred stock will be redeemable at par plus all accumulated dividends and upon payment of the current dividend (in no case less than at the rate of $4 per annum) to date of redemption. Each share of the new preferred stock will have equal voting rights with each share of Atlantic Coast Line common stock in the election of directors.

(l) The common stock issuable in the reorganization will be the now outstanding common stock of the Atlantic Coast Line. This stock is of no par value and holders thereof are entitled to 1 vote per share for all purposes. This stock is at present outstanding in the amount of 823,427 shares.

(m) The reorganization managers will be not more than three in number, all to be appointed by the court.

(n) So far as the provisions of the plan approved by the Commission on January 8, 1945 conflict with the plan approved herein, which provides for a merger of the debtor with the Atlantic Coast Line, such provisions of the previously approved plan are canceled.

(o) All petitions filed by any parties inconsistent with the provisions of the approved plan are denied.

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Third Supplemental Order of the Interstate Commerce Commission Entered April 8, 1947.

[Omitted in printing as copy of this Order is included in the photo-lithographed copy of the Fourth Supplemental Report of the Commission as reported in 267 I. C. C. 729-759.]

Report of Trustees Filed September 28, 1948 Giving Information Requested by St. Joe Paper Company.

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

To the Honorable Louie W. Strum, Judge of said Court:

Pursuant to Petition of St. Joe Paper Company filed herein on July 30, 1948 praying that the Trustees report to the Court certain detailed information as set forth in said Petition, the Trustees annex hereto Statements showing:

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Report of Trustees Filed September 28, 1948 Giving Information Requested by St. Joe Paper Company.

(a). Amounts expended under Orders of Court for Additions and Betterments authorized between July 1, 1944 and January 1, 1947 (this latter date being used by oral direction of counsel for St. Joe Paper Company instead of the date July 1, 1947 stated in the Petition) that were not provided for or included in the Rehabilitation Program of the Report of Interstate Commerce Commission dated April 8, 1947 (Doc. 578). This Statement shows the data requested in Items 1 (a), (e) and (f) of the prayer of the Petition. With regard to Item (e) there were no expenditures made, chargeable to Additions and Betterments, for any additional property in the classes specified, with the exception of land for which small outlays were made and included in the general Additions and Betterments program and therefore included on the Statement as such.

(b). Disbursements for shares of capital stock and car note of the Pullman Company, with dividend and interest received. (See Doc. 509).

(c). Total cost of constructing the Fort Pierce Cut-Off, as of July 31, 1948, including credit for salvage etc.

(d). Down payments, Principal payments and Interest payments made by months to August 31, 1948 under Conditional Sale Agreement dated March 15, 1946 with Edward G. Budd Manufacturing Company—The Florida National Bank, assignee.

Respectfully,

Scott M. Loftin and John
W. Martin, as Trustees,
By (Signed) John W. Martin,
Trustee.

(Signed) Russell L. Frink,
Counsel for Trustees.

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Report of Trustees Filed September 28, 1948 Giving Information Requested by St. Joe Paper Company.

STATE OF FLORIDA,
COUNTY OF DUVAL.

John W. Martin, being duly sworn, says that he is one of the Trustees named in the foregoing Report and makes verification on behalf of both of said Trustees; that he has read the foregoing Report and knows the contents thereof and that the same are true to the best of his knowledge and belief.

(Signed) JOHN W. MARTIN

Subscribed and sworn to before me this 23rd day of September, 1948.

(Signed) MARIE R. KILLILAE,
Notary Public State of
Florida at Large.

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State[illegible]rments
[illegible]or

Purchase ..uthorised Year 1944	Dat[illegible] Exp. ash	Expenditures Mtrl. & Supplies on Hand, etc.	Total Charges
Purchase 100 Freight Cars.....	7-13-[illegible]	.....	$ 556,095.50
Gen'l A & B last 6 mos. 1944....	10-13-[illegible],575.95	30,167.35	334,324.96
Year 1945			
Gen'l A & B first 6 mos. 1945....	6-26-[illegible],799.09	78,346.02	588,235.94
Gen'l A & B last 6 mos. 1945....	10-12-[illegible],602.09	21,573.73	395,893.35
Year 1946			
Gen'l A & B first 6 mos. 1946....	6-24-[illegible]0,185.21	36,425.17	435,333.49
Purchase 5 Diesel Locos. and 28 Pass. Train Cars	10- 3-[illegible]	.....	1,008,929.66* 5 Locos only
Gen'l A & B last 6 mos. 1946....	10-15-[illegible]		
	9,598.09	47,631.09	324,607.20
	5,760.43	$ 214,143.36	$3,643,420.10
Less charges for Shop Machinery, a p[illegible] tation Program and included in [illegible] A & B projects.	4,612.89	.....	213,489.16
	1,147.54	$ 214,143.36	$3,429,930.94
Plus expenditures made prior to Janua[illegible] care of in the Rehabilitation Progr[illegible]			
Shop Machinery	1,166.77	.....	118,541.76
15 Diesel Locomotives, Condition[illegible]	.....	.....	699,745.81
Amount spent in connection with [illegible] during period July 1, 1944 a[illegible]	12,677.58	.....	1,299,910.29
GRAND TOTAL	74,991.89	$ 214,143.36	$5,548,128.80

*Less outstanding Equipment obliga[illegible]

Accounting Department,
St. Augustine, Florida,
September 8th, 1948.

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Report of Trustees Filed September 28, 1948 Giving Information Requested by St. Joe Paper Company.

FLORIDA EAST COAST RAILWAY COMPANY

Scott M. Loftin and John W. Martin, Trustees

Statement Showing the Total Cost of Constructing the Fort Pierce Cut-Off, Etc., as of July 31, 1948

Expenditures (New Work)		$1,544,038.77
Dismantlement Charges to Operating Expenses on portion of Okeechobee Branch physically removed*		98,038.28
		$1,642,077.05
Salvage from portion of Okeechobee Branch Removed*		
Land Sales	$ 7,509.63	
Property (Other than land) recovered for re-use or sold	361,891.93	369,401.56
Total Cost		$1,272,675.49

Accounting Department,
St. Augustine, Florida,
September 8, 1948.

* Additional Salvage expected from 53.5 miles (Maytown to Holopaw) left intact and under lease to Peavy-Wilson Lumber Company (Doc. 569).

Report of Trustees Filed September 28, 1948 Giving Information Requested by St. Joe Paper Company.

FLORIDA EAST COAST RAILWAY COMPANY

Scott M. Loftin and John W. Martin, Trustees

Statement Showing Payments Made by Months to August 31, 1948, Under Conditional Sale Agreement Dated March 15, 1946, with Edward G. Budd Manufacturing Company—The Florida National Bank, Assignee

Down Payments

June	1946	$ 56,653.65
July	1946	132,475.56
August	1946	18,925.08
September	1946	46,928.08
April	1947	17,829.36
May	1947	148,100.41
June	1947	65,094.10
April	1948	38,995.70
		$525,001.94

Principal Payments

January	1947	$ 43,245.00
February	1947	9,610.00
July	1947	43,245.00
August	1947	9,610.00
November	1947	23,567.00
December	1947	67,552.00
January	1948	9,610.00
April	1948	23,567.00
May	1948	24,307.00
June	1948	43,245.00
July	1948	9,610.00
		$307,168.00

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Report of Trustees Filed September 28, 1948 Giving Information Requested by St. Joe Paper Company.

Interest Payments

January	1947	$ 3,448.48
February	1947	792.28
July	1947	3,210.93
August	1947	713.54
November	1947	1,858.71
December	1947	1,901.84
January	1948	2,919.06
February	1948	648.68
May	1948	1,749.85
June	1948	1,804.79
July	1948	2,627.10
August	1948	583.80
		$ 22,259.06

Accounting Department,
St. Augustine, Florida.
September 8th, 1948.

Endorsed:

"Filed Sept. 28, 1948, Jacksonville, Fla.
Edwin R. Williams, Clerk."

COPY

Application of Trustees Filed September 23, 1948 for Authority to Purchase Ten Diesel Electric Locomotives.

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

To the Honorable Louie W. Strum, Judge of said Court:

The Petition of Scott M. Loftin and John W. Martin as Trustees herein, respectfully shows:

The steam locomotives of Florida East Coast Railway, except two small Pacific type road locomotives and one 6-wheel switcher acquired prior thereto, were purchased in the years 1923 to 1926, inclusive. At the time of purchase they were of the latest design and equipment, with capacity to adequately provide motive power required at that time in freight, passenger and switching service.

During the years since these locomotives were built there have been many improvements in design of steam locomotives whereby that type of power has been made more efficient and of greater capacity to meet the increased needs for improved transportation service. The maximum

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result has been obtained when the improved design was incorporated in the building of new power, but efforts have been made by the Railways and the locomotive builders to improve existing steam power to increase its efficiency. Such improvements in existing locomotives are limited in extent and more or less confined to the application of accessory devices for more efficient consumption of fuel and water, and to the application of new light weight machinery parts. The advantages of such additions and changes have been studied by the Mechanical Officers of the Trustees and their application to the existing power has been approved when the indicated benefits could be justified economically. The incorporation of the more important features of modernization would require rebuilding the locomotives entirely and would not be economically justified.

The demand for improvement in both freight and passenger train service to meet the competitive conditions has required the operation of trains at higher speeds than were in effect several years ago. In order to provide the motive power satisfactory for the improved service it has been necessary for the Railways to purchase new steam power of the most modern type, or other types of power such as the Diesel-electric locomotives acquired by the Trustees several years ago for the handling of passenger trains.

The Trustees have used their steam locomotives interchangeably in both freight and passenger service, and are still using the steam power for handling the freight trains. They have kept themselves informed with respect to the types of new power that the Railways throughout the country generally have been acquiring for use in freight train service, and the advantages being derived from the use of the new power. The Trustees have had several studies made in the past five years to determine the best plan to adopt with regard to the purchase of new motive power for use in freight trains, in view of the age of the existing steam power.

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The studies were carried out by representatives from the Operating and Mechanical Departments of the Railway in conjunction with representatives of the builders of locomotives, both steam and Diesel-electric. Full information was available for consideration concerning the traffic and transportation requirements of the Railway, as well as the results being obtained by the use of the new motive power on other lines. Special consideration was given to the Railway's needs for the motive power from the standpoint of the type of freight train service now required. These studies have shown that for some of the service the present steam power will be satisfactory for the next few years. It has also shown that for other services the present steam power, on account of design and age, should be replaced with more modern power in order to provide satisfactory service that is now required, and to bring about worthwhile savings in the cost of operation.

The investigations that have been made show that Diesel-electric locomotives, for the handling of the freight traffic to and from the Okeechobee area, including the switching and the handling of the cane trains of the United States Sugar Corporation, should be purchased to replace the 300-Series steam locomotives of the Railway; and that Diesel-electric locomotives should be purchased for the handling of the four main line regularly operated through freight trains between Bowden (Jacksonville) and Buena Vista (Miami), which will release the 800-Series steam locomotives for use in other service, and for replacing the older and less efficient steam locomotives of the 400-Series.

The 300-Series steam locomotives were built in 1923, and are the oldest road locomotives owned by the Trustees, except the two Pacific type locomotives mentioned above. These 300-Series locomotives are used exclusively for handling traffic to and from the Lake Okeechobee area and the cane trains of the United States Sugar Corporation. No other locomotives of the Railway are available to the Trustees for use on this portion of the Railway as all other

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locomotives now used are not suitable by design, and are too heavy for operating over the tracks in the Lake area on account of the unstable soil condition. The 400-Series locomotives, built in 1925, are of insufficient capacity to provide satisfactory service, due to the high speed now required in the handling of freight trains. On account of the intensive use that has been made of the locomotives in both series, coupled with their age, there has been a continuous increase in their repair costs. The 300-Series locomotives have reached the point where in the next year they will require almost complete rebuilding, the cost of which will be prohibitive.

To carry out the plan of providing new locomotives, found to be required from the studies made, will necessitate the purchase of the following:

4 4500 Horsepower Diesel-electric Road Freight Locomotives;

6 1500 Horsepower Diesel-electric Road Switching Locomotives.

The purchase of these locomotives will enable the Trustees to retire and dispose of the following steam power:

8 of the 300-Series Locomotives, and

6 of the 400 Series Locomotives.

The cost of purchasing the ten Diesel-electric locomotives, on the basis of lowest and best prices presently furnished by the builders, will be approximately:

4 New 4500 Horsepower Road Freight Locomotives @ $474,882.00 each.....	$1,899,528.00
6 New 1500 Horsepower Road Switching Locomotives @ $143,463.00 each	860,778.00
	$2,760,306.00

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In addition there will be freight charges from the builders' plant to the Trustees' line of railway, and tools and supplies for the locomotives, totaling approximately $36,000.00. The prices above stated, are subject to change on account of uncertainties with respect to both material and labor costs and it is necessary, as stated in previous applications of the Trustees (Docs. 527 and 545), when entering into agreements with builders for construction of equipment of this kind, to agree to a modification of the prices either upward or downward. The Trustees however, believe that the prices stated are fairly accurate as to final purchase price of the equipment. The estimated salvage from the sale of the steam locomotives retired will be $25,000.00 each, or a total of $350,000.00 for the fourteen locomotives.

It will be necessary to provide additional facilities at Bowden and Fort Pierce for servicing the Diesel locomotives when placed in service, and the estimated cost of these servicing facilities will be $47,300.00 at Bowden and $100,275.00 at Fort Pierce, a total of $147,575.00.

The benefits to be realized annually from the purchase of the proposed new Diesel locomotives, based on the present cost of operation (in the service now proposed to be supplanted by Diesel power) using the existing steam power, and the cost of performing the same service with new Diesel locomotives based on the latter's cost of operation, is shown in the following statement:

720,443 Freight Train Miles—Steam Locomotives—@ $1.945		$1,401,262
491,728 Freight Train Miles—Diesel Locomotives—@ $1.331	$654,490	
228,715 Freight Train Miles—Diesel Locomotives—@ 0.613	$140,202	
		794,692
Gross Savings		$ 606,570

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Application of Trustees—Purchase of Locomotives.

The Trustees believe it advantageous and for the best interest of the bankruptcy estate and the creditors thereof and also in the public interest, to acquire the ten locomotives herein described and to enter into necessary contracts therefor with the builders as early as possible. In order to obtain the highest priority possible on the production schedules of the builders, the Trustees have, subject to the approval of the Court, placed tentative orders with General Motors Corporation, builders of the locomotives of this kind, for the ten locomotives at the prices stated above. The Trustees are advised that the six road switching locomotives will be ready for delivery during October 1948 and the 4 road freight locomotives during December 1948 or January 1949.

The Trustees have made diligent inquiry respecting the most favorable terms upon which the purchase of these ten locomotives may be financed. They have felt it would be preferable to finance the same if possible on the basis of 10% cash, and 90% over a period of ten years through equipment trust or conditional sales agreement. Past experience (Docs. 428 and 504) and present inquiries however, conclusively demonstrate that it would be futile and useless to ask for bids on or attempt to finance the purchase of the locomotives through equipment trust or conditional sales agreement representing 90% of the cost of the equipment. Present inquiries also conclusively demonstrate that conditional sales agreement for railroad equipment are now been consummated for periods of eight or less years only and that it would likewise be useless and futile to attempt to finance the same through a conditional sales agreement over a ten-year period. The Trustees believe therefore, that the purchase should be financed by the Trustees on the basis of 25% cash, and the balance or 75% of the cost of the locomotives through a ten-year Philadelphia Plan Equipment Trust Agreement and lease, at the lowest available rate of interest. The Trustees will, if authorized by

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the Court, promptly prepare form of such equipment trust, designate the Trustee thereunder, and ask for bids thereon, reporting to the Court for further approval of their action thereunder.

As stated above, delivery of the six road switching locomotives costing approximately $860,778.00 is expected during October 1948 and the four road freight locomotives costing approximately $1,899,528.00 during December or January next. As an equipment trust will draw interest from its date, the Trustees have been given consideration to arrangements whereby the Equipment Trust may be dated, say January 1, 1949 (the interest thereon thus commencing on that date) and the six road switching locomotives delivered during October 1948 and any of the road freight locomotives delivered prior to the date of the equipment trust, may be used under a railroad equipment lease on a fair basis of rental, until the date of the Equipment Trust. In this way, the Trustees would not be paying interest on purchase price of the four road locomotives in advance of their delivery. General Motors Corporation, the builders of the locomotives, are agreeable to an arrangement of this kind and have agreed that the rental for the road switching locomotives shall be $10.96 per locomotive per day and the rental for the road freight locomotives shall be $36.28 per locomotive per day, which rental is, in the opinion of the Trustees, fair and reasonable. A form of Agreement, designated Railroad Equipment Lease, to be entered into between the General Motors Corporation and Trustees, setting forth the terms and conditions under which the locomotives shall be rented to and used by the Trustees prior to the date of the Equipment Trust, is hereto annexed, marked Exhibit "A".

The Trustees have considered carefully and at great length the information developed by the investigations made, covering the condition of the Railway's existing

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steam locomotives, and the need for acquiring new motive power required to furnish satisfactory freight train service that is necessary, and the demands of the existing competitive conditions. The trustees believe that the purchase of the Diesel locomotives here proposed is required to enable them to satisfactorily furnish the class of service now in demand, and to economically operate the service. In addition to providing the satisfactory service, there will be a return of approximately 16% on the investment as shown by the following statement, which amply justifies the expenditure. The statement has been computed on a basis of 2¼% interest on the equipment trust certificates, but the condition of the money market is such that it is impracticable to foresee with any degree of reasonable accuracy the interest rate at which the Trustees may be able to finance the equipment trust certificates. The Trustees will, of course, use their best efforts to secure the lowest interest rate available.

Gross Savings, as shown above			$ 606,570
Less:			
Depreciation		$ 152,906	
Inc. A/c New Diesels—Added	$ 182,456		
Dec. A/c Steam—Retired	29,550		
Insurance		19,000	
Interest—Average Annual		25,616	197,522
Net Savings			$ 409,048
Return on Total Net Investment			16.77%

The annual operating savings in cash of $409,048 in the ten year period covered by the proposed Equipment Trust will amount to $4,090,480.00 so that it is estimated there will be a net cash accrual over and above the cost of the equip-

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ment in the ten-year period of $1,330,174.00. In addition to the benefits to be derived from the accrual of this cash, the Trustees will be enabled to provide the class of service now required, and demanded by the patrons of the Railway.

The Trustees have in their hands sufficient funds of the Bankruptcy Estate to make the 25% cash payment required for the financing of said locomotives under Equipment Trust, pay the freight charges on and the tools and supplies for said locomotives and provide the additional serving facilities at Bowden and Fort Pierce, as above set forth. The Trustees are of opinion that financing of the purchase of said locomotives through ten-year Equipment Trust as herein outlined, affords the most favorable basis obtainable.

THE PREMISES CONSIDERED, the Trustees recommend that they be authorized to enter into agreement, in form satisfactory, to the Trustees, with General Motors Corporation for the construction and sale to the Trustees or their assigns, of the four Diesel-electric road freight locomotives and the six Diesel-electric Road Switching Locomotives, at a total cost of approximately $2,760,306.00; to finance $2,070,000.00 being approximatey 75% of the cost of said locomotives, under a Philadelphia Plan of Equipment Trust to be known as "Florida East Coast Railway Equipment Trust, Series K", the remainder of the cost of said locomotives and the freight charges thereon and tools and supplies therefor, to be paid in cash by the Trustees out of bankruptcy estate funds; to enter into Railroad Equipment Lease in the form of Exhibit "A" annexed, with General Motors Corporation for the rental of said locomotives prior to the date of the Equipment Trust; to expend approximately $147,575.00 for additional servicing facilities for said locomotives at Bowden and Fort Pierce; and to take such action including the execution of such other instruments as may be necessary or proper to inaugurate the acquisition of said locomotives, and consummate subject to the further approval of the

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Court as to interest rate and form of Equipment Trust) the financing of the cost of said locomotives, all as above generally set forth.

Respectfully,

SCOTT M. LOFTIN and
JOHN W. MARTIN, Trustees,
By (Signed) SCOTT M. LOFTIN,
Trustee.

(Signed) RUSSELL L. FRINK,
Counsel for Trustees.

STATE OF FLORIDA,
COUNTY OF DUVAL.

SCOTT M. LOFTIN, being duly sworn, says that he is one of the Trustees of the property of Florida East Coast Railway Company and makes verification hereof on behalf of both Trustees; that he has read the foregoing and knows the contents thereof and that the same are true to the best of his knowledge and belief.

(Signed) SCOTT M. LOFTIN.

Subscribed and sworn to before me
this 16th day of August, 1948.

(Signed) MARIAN JONES,
Notary Public, State of Florida at Large.

(SEAL)

OPY

EXHIBIT "A"

RAILROAD EQUIPMENT LEASE

This Lease Agreement, dated as of the day of , 1948, by and between GENERAL MOTORS CORPORATION, a corporation of the State of Delaware (Electro-Motive Division), with a principal place of business at McCook (Post Office LaGrange) Illinois, hereinafter referred to as the "Lessor", and SCOTT M. LOFTIN AND JOHN W. MARTIN AS TRUSTEES OF THE PROPERTY OF FLORIDA EAST COAST RAILWAY COMPANY, and not individually, hereafter referred to as the "Lessees",

WITNESSETH, That:

1. Lessor has in process of construction and nearing completion at its Electro-Motive Division plant at McCook, Illinois, the following described railroad equipment (hereinafter collectively called "locomotives"), viz:

Four (4) New 4500 H. P. Diesel-electric freight locomotives, consisting of two 1500 H. P. "A" units and one 1500 H. P. "B" unit each, constructed in accordance with specification #8002-A, dated March 2, 1947, and #8003-A, dated June 3, 1947, and bearing

Lessor's Nos.	Lessees' Nos.
"A" Units	"A" Units
5516 - 5517	501 - 502
5518 - 5519	503 - 504
5520 - 5521	505 - 506
5522 - 5523	507 - 508
"B" Units	"B" Units
5524 - 5525	551 - 552
5526 - 5527	553 - 554

and

Six (6) new 1500 H. P. Diesel-electric road switching locomotives, constructed in accordance with specification #8011, dated September 1, 1947, and bearing

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Lessor's Nos.	Lessees' Nos.
5528 - 5529	601 - 602
5530 - 5531	603 - 604
5532 - 5533	605 - 606

Copies of said specifications have been furnished to the Lessees and are, by reference, made a part of this Lease Agreement as fully as though expressly set forth herein.

2. Lessor hereby leases to Lessees and Lessees hereby hire from Lessor, for a rental of Thirty-six and 28/100 Dollars ($36.28) per day per road freight locomotive (consisting of 2 "A" and 1 "B" Units as aforesaid), and Ten and 96/100 Dollars ($10.96) per day per road switching locomotive, such rental to be paid monthly at the end of each month upon bill rendered by Lessor covering the rental accrued during that month; each of said locomotives to be used upon the lines of railroad in possession of and being operated by Lessees, upon and subject to the terms and conditions hereinafter set forth.

3. The Lessor will deliver said locomotives to the Lessees on the Lessees' tracks at Miami, Florida, freight charges collect, as promptly as constructed, and, when delivered, said locomotives shall become subject to the terms and provisions of this agreement the same as if delivered simultaneously with the execution and delivery thereof.

At or before the delivery of each of said locomotives, the Lessees agree to cause to be furnished and delivered to the Lessor a Certificate, executed in quadruplicate, by Lessees or any agent or agents they may designate therefor, stating that the locomotives specified by number in such certificate have been delivered to and accepted under this Lease Agreement by the Lessees.. The Lessees agree to assume any expense and risk of loss in and of the removal of said locomotives from the Lessor's plant at McCook, Illinois to the point of delivery to the Lessees as aforesaid.

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The Lessees agree that said locomotives shall be used only in the State of Florida.

4. Lessor will supply an instructor with each of said locomotives for such length of time as Lessor may deem necessary to instruct the personnel of Lessees in the operation and maintenance thereof. Lessees shall provide such instructors, without expense to Lessor, with all necessary labor, materials (except materials for replacement of defective parts of the locomotives), locomotive supplies and, while they are engaged in and going to and from such instruction, with free transportation on lines controlled or operated by Lessees.

5. At or before delivery of said locomotives, the Lessor will cause to be furnished, placed and fastened upon both sides of each locomotive (and of each unit thereof) a metal plate upon which shall be plainly, distinctly and conspicuously marked, in letters not less than seven-sixteenth of an inch in size, the inscription:

"General Motors Corporation
Electro-motive Division
Owner."

The Lessees shall keep and maintain such plates, so marked, on each of said locomotives and will not allow any other name to be placed thereon as a designation or claim of ownership thereof; provided, however, that in the event of the Lessor's sale, transfer or assignment of its right in and to this Lease Agreement and said Locomotives, the Lessees shall at their expense and upon notice thereof by the Lessor or such assignee, or any successive holder hereof, change the name plates to indicate such assignee's title and ownership in and to said locomotives and cause to be delivered to such assignee a certificate executed in its behalf by an agent duly designated for that purpose, showing compliance with this provision.

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It is understood that this provision shall not prohibit the Lessees from causing the locomotives to be lettered "Florida East Coast Railway Company", "Florida East Coast Railway", "Flagler System" or lettered or marked in some other appropriate manner for convenience of identification of their interest therein.

6. Lessees agree to effect and maintain, at their own cost and expense, upon the locomotives during the continuance of this agreement, under a policy or policies payable to Lessor and Lessees, as their respective interests may appear, insurance in an amount satisfactory to Lessor against loss or damage by wreck, collision, cyclone, derailments, explosion, flood, tornado and windstorm, fire and lightning, and against other loss or damage the risk of which is customarily insured against by railroad companies; provided, however, that such policy or policies may contain appropriate and customary deductible clauses. Lessees will prior to the delivery of the locomotives to them under this agreement furnish Lessor with evidence satisfactory to Lessor that such insurance will be effected and so maintained.

7. From and after the time of delivery of the locomotives to Lessees, and until their surrender and redelivery to Lessor under this agreement, the possession, use, operation and maintenance of the locomotives shall (subject to the provisions of Paragraph 14 hereof) be at the sole risk and expense of Lessees and Lessees will assume and shall be solely responsible for, and shall indemnify and save harmless Lessor from and against (a) any and all loss or damage, usual wear and tear excepted, of or to the locomotives, and (b) any and all claims, demands, suits, judgments or causes of action for or on account of injury to or death of persons or loss or damage to property, which may result from or grow in any manner out of the presence, use or operation

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of the locomotives while in the possession of the Lessees under this agreement.

8. Lessees shall comply with all laws and regulations of any State or Governmental authority having jurisdiction thereof, respecting the manner of using or operating the locomotives, or any thereof, during the term of this agreement.

9. The Lessees shall maintain and keep said locomotives in good order and repair at all times, subject to the right of the Lessor to inspect the condition and supervise the maintenance thereof, and in accordance with Lessor's recommendations in any case affecting the repair parts, quality of fuel oil and lubricating oil, the fitness of the locomotives for operation in any class or type of service different from that for which designed or offered and which might involve possible impairment of the locomotives due to overloading or other abuses, and any other factors material to and necessary for the proper maintenance and operation of said locomotives. The Lessees shall not effect any change in the design, construction or specifications of the locomotives, body or power plant equipment or component part thereof, without the written authority and approval of the Lessor.

10. The Lessees agree to pay any and all taxes which may be imposed upon or in respect of said locomotives by reason of or in connection with Lessees' possession or use of the locomotives under this agreement. It is understood, however, that the Lessees shall not be required to pay or discharge any such tax so long as they shall, in good faith and by appropriate legal proceedings, contest the validity thereof in any unreasonable manner which will not affect or endanger the title and interests of the Lessor in and to the locomotives.

11. This agreement (including the obligation of the Lessees to pay the rental provided for in Paragraph 2 hereof) shall in respect of each of said locomotives be for the

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period beginning on the date of delivery of such locomotives to Lessees under this agreement and ending on February 1, 1949, or on such later date as shall be mutually agreed upon; PROVIDED, HOWEVER, that in the event Lessees shall on or prior to February 1, 1949, or on or prior to such later date, if any, to which this lease may be so extended, purchase such locomotive under or by virtue of that certain agreement (hereinafter sometimes called "purchase agreement") referred to in Paragraph 15 hereof, then as and when delivery occurs of such locomotive to Lessees, as the purchaser, at the point of delivery to such purchaser, this agreement shall, as to such locomotive so purchased, thereupon stand terminated; but this agreement shall continue in effect as to any of said locomotives not so purchased until February 1, 1949, or to such later date, if any, to which this lease may be so extended, or the date of the purchase thereof, whichever date is earlier.

12. Upon the expiration of this agreement (unless Lessees shall thereupon acquire the locomotives as provided in said purchase agreement) Lessees shall return and surrender the locomotives to Lessor on such point on tracks of the Lessees as Lessor may designate in as good condition as when received by Lessees hereunder, natural wear and tear excepted; but nothing in this agrement shall be deemed to release Lessees from any of their obligations contained in said purchase agreement providing for the acquisition by Lessees on or, at the election of Lessees before February 1, 1949, (the herein extended date), or such later mutually agreed date, if any, of said ten (10) locomotives.

13. If required by Lessor, Lessees will, at their expense, upon execution and delivery of this agreement, cause same to be promptly and duly filed and/or recorded in conformity with the laws of the State of Florida, in order to publish notice of and to protect the title of Lessor to the locomotives in and by this agreement leased by Lessor to Lessees.

14. Lessor covenants that each of the locomotives deliv-

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ered to Lessees under this agreement will be free from defects in material and workmanship under normal use and service; its obligations under this covenant being limited to making good at its factory any part or parts thereof which shall after delivery of the locomotive to Lessees hereunder and during the period of continuance of this agreement, or before such locomotive has been 100,000 miles in scheduled service, whichever event shall first occur, be returned to Lessor with transportation charges prepaid by Lessees and which Lessor's examination shall disclose to its satisfaction to have been defective; it being understood that such obligation of Lessor shall not apply to any equipment which shall have been repaired or altered, unless repaired or altered by Lessor or by its authorized service representatives, if, in its judgment, such repairs or alterations affect the stability or reliability of the equipment, or if the equipment has been subject to misuse, negligence or accident.

15. Lessees have heretofore, by letter dated April 13, 1948, placed order with Lessor for the purchase of said four freight locomotives at an agreed price of Four Hundred Seventy-four Thousand Eight Hundred Eighty-two Dollars ($474,882.00) each, and said six switching locomotives at an agreed price of One Hundred Forty-three Thousand Four Hundred Sixty-three Dollars ($143,463.00) each, and which order has been duly accepted by Lessor.

This instrument is executed by Scott M. Loftin and John W. Martin as Trustees of the property of Florida East Coast Railway Company, and not individually, in accordance with and as authorized by Order of the District Court of the United States for the Southern District of Florida, dated 1948 in Florida East Coast Railway Company Reorganization Proceedings (Clerk's No. 4827-J).

In Witness Whereof, this Agreement has been signed and sealed by or in behalf of the respective parties hereto

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in several counterparts (each of which shall be deemed an original) as of the day and year first hereinbefore written.

GENERAL MOTORS CORPORATION

By.....
Vice-President.

Attest:

.....
Assistant Secretary.

Signed, sealed and delivered as to General Motors Corporation in the presence of:

.....

.....

..... (L. S.)

..... (L. S.)

As Trustees of the property of Florida East Coast Railway Company, but not individually.

Signed, sealed and delivered by Scott M. Loftin and John W. Martin, as Trustees, in the presence of:

.....

.....

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STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.:

I hereby certify that on this day before me, an officer duly authorized to administer oaths and take acknowledgments, personally appeared ..... and ....., respectively Vice-President and Assistant Treasurer of General Motors Corporation, a corporation under the laws of the State of Delaware, to me well known to be the persons described in and who as such officers of said corporation executed the foregoing Railroad Equipment Lease, and severally acknowleged before me that they executed the same as such officers in the name and on behalf of said corporation for the uses and purposes therein expressed, and that they executed the same and affixed thereto the corporate seal of said corporation under due authority from said corporation and that said instrument is the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at .....in said County and State, this .....day of ....., 1948.

.....
Notary Public.

My Commission Expires

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STATE OF FLORIDA,
COUNTY OF DUVAL.

I hereby certify that on this.....day of....., 1948, before me an officer authorized to administer oaths and take acknowledgments, personally appeared Scott M. Loftin and John W. Martin, as Trustees of the property of Florida East Coast Railway Company, to me well known to be the persons described in and who as Trustees aforesaid executed the foregoing Railroad Equipment Lease, and they severally acknowledged the execution of said instrument to be their free act and deed as such Trustees, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Jacksonville in said County and State, the day and year last aforesaid.

.....
Notary Public, State of
Florida, at Large.

My Commission Expires

Endorsed:

"Filed Sept. 23, 1948, Jacksonville, Fla.
Edwin R. Williams, Clerk."

NOTE

Notice of hearing upon the above Application at 11:00 o'clock on October 1st, 1948, served upon all parties to the cause, omitted in printing.

COPY

Order Filed October 6, 1948 Authorizing Trustees to Purchase Ten Diesel Electric Locomotives.

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF FLORIDA.

IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

This cause coming on to be heard after due notice, upon application of the Trustees for authority to purchase ten new Diesel-electric locomotives costing approximately $2,760,306.00 and their recommendation that the purchase be financed by the Trustees paying approximately 25% of the purchase price thereof out of bankruptcy funds in their hands, and financing $2,070,000.00 (or approximately 75% of such cost) under ten-year equipment trust at the lowest available rate of interest; and it appearing that the purchase of said locomotives and the financing thereof as recommended by said Trustees will be in the interest of the bankruptcy estate and the creditors and stockholders thereof, and also in the public interest, and the Court having considered said Application and heard argument of counsel, it is thereupon

ORDERED, ADJUDGED AND DECREED as follows:

1. The recommendations of the Trustees respecting the purchase of said locomotives and the financing of the costs thereof, are hereby approved and adopted.

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2. The Trustees are authorized and directed to enter into agreements, in form satisfactory to the Trustees, with General Motors Corporation, a corporation under the laws of the State of Delaware, for the manufacture and sale to the Trustees or their assigns, of four 4500 horsepower Diesel-electric Road Freight locomotives and six 1500 horsepower Diesel-electric Road Switching locomotives, as described in the Trustees' Application, costing approximately $2,760,306.00. The obligations of the Trustees herein authorized shall constitute their obligations solely as Trustees of the property of the Debtor and not individually.

3. The Trustees are authorized and directed to finance $2,070,000.00 (representing approximately 75%) of the cost of said locomotives through ten-year Philadelphia Plan Equipment Trust of the usual and customary form, at the lowest available rate of interest. The bank or trust company serving as Trustee under said Equipment Trust, shall be selected by the Trustees. The Lease and Agreement constituting the Equipment Trust, and the Equipment Trust Certificates to be issued thereunder, shall be in such form and contain such provisions consistent with this Order as shall be approved by the Trustees. The issuance of the Equipment Trust, the issuance and sale of Equipment Trust Certificates thereunder and the assumption of liability by the Trustees with respect to such Certificates, shall be subject to authority of the Interstate Commerce Commission first being had and obtained, and the form of such instruments, the rate of interest to be borne by the Certificates and the price at which the Certificates shall be sold, shall be subject to the further approval of this Court after due notice to all parties herein.

4. The Trustees are authorized and directed to pay all the costs of said locomotives, in excess of $2,070,000.00 financed as set forth in paragraph 3 hereof, out of funds in their hands as Trustees.

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5. The Trustees are authorized to expend (a) not exceeding $100,275.00 for installing and constructing additional facilities at Fort Pierce for servicing said Diesel locomotives, as set forth in the Application, and (b) not exceeding $37,000.00 for freight charges and tools and supplies for said locomotives; and to pay the same out of funds in their hands as Trustees, and charge the same to appropriate accounts.

6. The Trustees are authorized to make applications to the Interstate Commerce Commission, in such form as required by it, for its authority for the issuance and sale of equipment trust certificates under the Equipment Trust and for assumption of obligation and liability of the Trustees in respect thereto. The Trustees, or one of the Trustees acting for and on behalf and in the name of both Trustees, are authorized to verify and file the Applications hereby authorized.

7. The form and provisions of the Railroad equipment Lease from General Motors Corporation to the Trustees (annexed to the Trustees' Application as Exhibit "A" thereof) covering rental by the Trustees of the locomotives prior to the completion of the financing as herein authorized, is approved. The Trustees are authorized and directed to enter into Equipment Lease substantially in the form of said Exhibit "A", with such changes therein as may be approved by the Trustees, and to carry out and perform the same as therein set forth.

8. The Trustees are authorized and directed, generally, to do and perform all matters and things and make, execute and deliver all contracts, agreements and instruments which may from time to time be necessary or desirable, subject to and in accordance with the provisions of this Order, to the end that said locomotives may be acquired and the equipment trust consummated in the manner and for the purposes set forth in the Trustees' Application.

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And it appearing to thet Court that the locomotives and the additional servicing facilities at Bowden and Fort Pierce herein described, are not included in the rehabilitation and improvement program provided for in the Report and Order of the Interstate Commerce Commission dated April 8, 1947 (Doc. 578), and that the rights of the holders of the First and Refunding Mortgage Bonds of Florida East Coast Railway Company in the use of cash subject to the lien of such Mortgage, for acquiring said locomotives and providing the additional facilities at Bowden and Fort Pierce, should be respected and preserved in the manner similar to orders heretofore entered herein (Docs. 588, 595 and 662).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED:

9. The funds hereby authorized to be expended by the Trustees shall when expended, be deemed to have been advanced by and for the account of the holders of the First and Refunding Mortgage Bonds of Florida East Coast Railway Company who shall be reimbursed therefor, and to secure such reimbursement said holders of said First and Refunding Mortgage Bonds shall have and they are hereby given a lien upon the cash and property of the debtor corporation to the extent of the sums so advanced, which lien to the extent of the sums advanced and expended for the purposes mentioned in this Order, shall be subject only to the lien of the Mortgage securing the Debtor's First Mortgage Bonds and shall be superior to any interest in the property acquired through reorganization. The Court reserves jurisdiction to redetermine the amount of said lien hereby given, if equitable considerations so require, at the time of the final consummation of this reorganization. *Provided, however,* that nothing in this paragraph or in this Order shall directly or indirectly, prejudice, limit or restrict the rights of the holders of the Equipment Trust Certificates issued under said Equipment Trust or of the Trustee of said Equipment Trust, it being specifically understood that

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title to said locomotives shall remain in the Trustee of said Equipment Trust until payment in full of the principal of and interest on said Equipment Trust Certificates and of all other funds to be paid to the Trustee under said Equipment Trust and until all obligations of the Trustees pursuant to the terms of the Lease and Agreement constituting such Equipment Trust, have been fully performed.

DONE AND ORDERED at Jacksonville, Florida this 6th day of October, 1948.

(Signed) LOUIE W. STRUM,
Chief Judge.

Endorsed:

"Filed Oct. 6, 1948, Jacksonville, Fla.
EDWIN R. WILLIAMS, Clerk.

Portions of the Transcript of Proceedings of Hearing Before the Court on April 22, 1949.

The following is a portion of the record of the hearing before the Court on April 22, 1949.

The Court: • • •

Now, the Trustees advised us this morning that after providing for all other cash requirements, improvements and betterments and all of the payments or demands upon them in the way of cash, that they will have nearly five and one-half million dollars of fresh cash on hand. That money, I think, as far as it can be prudently so applied, belongs, in equity and good conscience, to the five per cent bondholders. The interest on those bonds is far, far behind, and to the extent that it can be prudently done, I think those interest coupons should be paid. The debtor owes the money. As Calvin Coolidge once said, "They hired the money and they are behind in their payments", and so it has been, here, that they have not been able to pay

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for it. I do not think we should do anything over optimistic or imprudent, but, I think, to the extent that it can be prudently done, that the free cash should be applied in payment of the long overdue coupons on the five per cent mortgage bonds. It takes $1,125,000.00 to pay one. I think that the Trustees can prudently pay three of those coupons at this time. That is $3,375,000.00. That will leave about a million and a half, approximately, of free cash. I do not think we should bring it down any closer than that, because we are living in a very uncertain age and very uncertain world, and a million and a half dollars in the operation of that railroad is not a great deal of money to meet such contingencies that might arise. But I do think that it would be prudent to pay three coupons on the five per cent bonds aggregating $3,375,000.00, and an order will be entered with the usual terms and conditions as the previous orders; that is, the same form, to pay three of the oldest outstanding coupons on the five per cent bonds. I believe that disposes of that matter, unless somebody else wants to say something about it.

The following is another portion of the transcript of the hearing on April 22, 1949.

Mr. A. A. JACKSON, having been produced and first duly sworn as a witness, testified as follows:

Direct examination by Mr. Frink:

Q. Mr. Jackson, you have before you the application of the Trustees respecting additions and betterments for the year 1949. Will you take these, item by item, and in view of the discussion here in the courtroom, make any comments that you feel proper respecting each one of the items? A. The first item is sixty thousand dollars for industrial side tracks.

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Q. Speak louder, please, Mr. Jackson. A. The first item is sixty thousand dollars for industrial side tracks. This amount is proposed to cover the railroad's proportion in the cost of constructing——

Mr. Bourne: Speak louder, please.

A. This amount is proposed to cover the railroad's proportion in the cost of constructing industrial side tracks. When we have an application for an industrial side track, we frequently have to pay a portion of the costs. The sixty thousand dollars is to be used to cover our portion of the cost of constructing these tracks.

Q. Would you consider those industrial tracks necessary and an aid in the creation of business for the line in the coming year? A. Yes, I do.

The next item is company side tracks, $10,460.00. This is to cover the cost of constructing a short running track in the vicinity of Little River, so that switching of the side tracks at that location can be carried out without interference from main line train movements. We estimate that we can save $10,460.00 in operating expenses in a year and give better service to the industry.

The next item is stations and platforms, $16,550.00.

This expenditure is proposed to cover the cost of constructing a shed at Bowden in which to store truck equipment at night when not in use, with the maintenance of way department; when it is not in use during nights and on Sundays. It also covers construction of waiting booths on the landing platforms at Cocoa-Rockledge and to provide facilities for passengers at that point, and to overcome the criticisms we have had from the traveling public because of lack of facilities at Cocoa.

The next item is roadway building, $6,400.00.

This expenditure is required to provide sanitary toilet facilities in the section houses at Dania that we are required to supply in accordance with the city ordinance.

Q. You mean you had an ordinance passed by the city, requiring you to install those toilets? A. We didn't. They had it. We had to comply with the city ordinance.

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Bridges, trestles and culverts, $52,700.00.

This expenditure is needed for rebuilding three main line timber trestles with ballasted tracks that were constructed in 1924 and 1925 and have now reached the point where extensive repairs that can not be justified, will be required to maintain the structures in safe condition until the work of rebuilding is carried out.

The next item is ballast, $70,000.00.

The expenditure for this item is for the placing of rock ballast on a portion of the line between St. Lucie Canal and Canal point where the track is now maintained on sand ballast which results in heavy maintenance charges for leveling up and keeping the track in safe condition.

Q. What do you feel will be the annual—? A. This expenditure is needed, therefore, to reduce maintenance costs and we feel it will save at least ten per cent of the expenditures annually. Ten per cent annually.

The next item is $22,225.00 for roadway equipment. This expenditure covers the cost of purchasing the following roadway machines:

One dump truck;

One small road roller for use in repairs to highway crossings, stations, platforms and driveways, replacing hand labor;

One air compressor to replace an old machine that is worn out and is for use in the bridge gangs to supply air for the operation of power tools;

One concrete mixer to replace hand labor now being used;

Two pumps for use by bridge gangs and for pumping out excavations in connection with buildings and foundations;

One clamshell bucket, for use in excavation work to replace work now being done by hand;

One Universal iron worker for use in roadway shop in the fabrication of metalwork that is now carried on by hand;

One bandsaw for use of roadway shop to replace an old

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saw that is necessary, in order to eliminate labor done by hand.

We estimate that the savings to be effected from making this expenditure will be sufficient to pay for it in two years.

The next item is signals, $310,000.00.

Q. Let us pass the signals. I believe the Senator has discussed that sufficiently. Let us go on to the next item. Water and fuel. A. The next is water and fuel stations, $7,100.00.

This expenditure covers the cost of changing the water station at Benson Junction from manually operated to automatic operation.

Additional tools for pipe maintenance gang and additional filter and check valve for the Diesel fuel station at New Smyrna Beach to provide adequate protection for the Diesel locomotives.

We estimate savings to be effected from this expenditure to be about eighty-five hundred dollars. In other words, it will be annually.

Q. You mean, you will save more than the original cost? A. We will save more in the first year than the cost.

The next item is shop machinery, $39,320.00.

That covers 1-27 inch engine lathe that is required, primarily, to make repairs on Diesel locomotives. At the present time, we have no machine that will make these repairs.

Also, one-400 ton wheel press. This machine is needed to replace an old press 22 years old that is practically worn out and may fail at any time. The existing press is the only one we have and should it fail, it would tie up our operations.

One-ten by ten air compressor. This machine was recovered from a retirement made from another point and is now on hand in the storehouse. At the present time, a great deal of time is lost by not having sufficient air in the repair yard at New Smyrna Beach to keep the men busy. It is used, or it is proposed to install this compressor so as to

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supply sufficient compressed air to operate the car repair yard.

The next is the work equipment, $102,525.00.

This expenditure covers one Diesel electric powered crane for use at Miller Shops to replace an old steam crane that is twenty-five years old. It is badly worn and can not be economically maintained on account of its worn condition.

The new machine is needed as a safety measure, and will effect a savings of approximately sixty-five hundred dollars per annum.

Order Filed April 26, 1949 Authorizing Expenditure in 1949 of Not to Exceed $700,000 for General Additions and Betterments to Debtor's Properties.

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

This cause coming on to be heard after due notice, upon application of the Trustees for authority to increase, for the year 1949, the amount of the general authorization made herein (Doc. 3) for general additions and betterments to

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the property of the debtor railway, particularly for the additions, betterments and improvements described in the application of the Trustees, and the Court having considered said application, the evidence submitted and the argument of Counsel, and it appearing that none of the additions and betterments described in the application of the Trustees, are included within the program of rehabilitation provided for in the report and order of the Interstate Commerce Commission dated April 8, 1947 (Doc. 578); and

The Court being of the opinion that the additions and betterments described in the application of the Trustees are necessary and should be made, but that the rights of the holders of First and Refunding Mortgage bonds of Florida East Coast Railway Company in the cash assets should be respected and preserved since all of the cash is subject to the lien of the mortgage securing the First and Refunding bonds of Florida East Coast Railway Company;

IT IS HEREBY ORDERED AND ADJUDGED:

That the Trustees be and they are hereby authorized to expend during the calendar year 1949, not to exceed $700,000 for general additions and betterments to the properties in their custody (not taking into account special authorizations for unusual and extraordinary improvements, but including allowances of $85,000 semi-annually previously authorized by this Court) in addition to the use of materials and supplies already on hand, accounting adjustments for use of tools, transportation charges for the same, etc., not requiring cash expenditures.

This order shall apply only to the year 1949 and the authorization of not to exceed $85,000 made by the order of January 31, 1941 (Doc. 3) shall remain in full force and effect as to all subsequent six months periods unless otherwise ordered.

The money so authorized to be expended by the Trustees, shall when expended, be deemed to have been advanced by

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and for the account of the holders of the First and Refunding Mortgage bonds of Florida East Coast Railway Company who shall be reimbursed therefor, and to secure such reimbursement said holders of First and Refunding Mortgage bonds shall have and they are hereby given a lien upon the cash and property of the debtor corporation to the extent of the sum of $700,000 so advanced to and expended by the Trustees for additions and betterments to the property of the debtor, which lien the extent of the sums advanced and expended for the purposes named in said application, shall be subject only to the lien of the mortgage securing the debtor's First Mortgage bonds and shall be superior to any interest in the property acquired through reorganization. The Court reserves jurisdiction to redetermine the amount of said lien hereby given, if equitable consideration so require, at the time of the final consummation of this reorganization.

The Trustees are required to make report as to the additions and betterments herein authorized when they have been completed. The making of this order is not to preclude the Trustees from making special application for additional sums in particular cases for extraordinary additions and betterments.

DONE AND ORDERED at Jacksonville, Florida, this 26th day of April, 1949.

LOUIE W. STRUM
Chief Judge.

Endorsed:

"Filed April 26, 1949
Jacksonville, Fla.
Edwin R. Williams, Clerk."

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Order Filed April 26, 1949 Authorizing Debtor's Trustees to Pay Three Installments of Interest on Debtor's First and Refunding 5% Mortgage Bonds.

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

In the MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

All affected parties having been heard, after due notice, upon the matters hereinafter mentioned, it is upon consideration thereof

ORDERED AND ADJUDGED:

1. Judgment upon the petition (filed herein March 7, 1949) of Atlantic Coast Line Railroad Company for a modification of Order Directing Trustees to Purchase First Mortgage Bonds of Debtor, dated December 14, 1945 (Doc. 507), is hereby reserved.

2. The Trustees of the Debtor are hereby directed to pay in cash forthwith the unpaid installments of interest on Florida East Coast Railway Company's First and Refunding 5% Mortgage Bonds which matured on September 1, 1933, March 1, 1934 and September 1, 1934, each in the aggregate sum of $1,125,000.00, or a total for the three

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installments of $3,375,000.00; provided, however, that any bank receiving any of said sum to be distributed in payment of any such interest shall hold the same in trust for such purpose, except that at any time after six months from the entry of this Order any part of said sum not then distributed by any such bank shall be subject to withdrawal or such other disposition as may be directed by written order of said Trustees.

3. Payment of the sum authorized in paragraph 2 hereof shall be made by the Trustees at such place or places and at such time and in such manner as the Trustees may determine consistent with this order and with the terms of the coupons on said bonds and the trust indenture securing the same. The Trustees shall make such requirements with respect to the evidencing of such payment of interest on registered bonds not bearing coupons as in their discretion may seem reasonably necessary and proper in the premises to carry out the terms and intent of this order.

4. In order that the Trustees may have an accurate and up-to-date list of bondholders, as required by the Bankruptcy Act, and may have a record of the owners of the coupons or interest installments now being paid in connection with the claim of said bondholders to interest thereon, the Trustees are authorized and directed in making the payments herein authorized, to require the disclosure of the name and mailing address of each bondholder and the principal amount of all Florida East Coast Railway Company 5% First and Refunding Mortgage Bonds held by such bondholder, prior to the payment of interest to such bondholder.

5. The Court expressly reserves for future determination the claim of holders of First and Refunding Mortgage bonds to be paid interest upon the overdue installments of interest upon said bonds since the maturity thereof and this

order shall not be construed as affecting the rights of said bondholders with respect thereto; nor shall acceptance by the holders of the First and Refunding Mortgage bonds of an amount equal to the face value of the coupons, nor the delivery by them to the Trustees of any coupon or coupons on said bonds, constitute an estoppel against or a waiver of, or in any way prejudice or affect the claim of the holders of said bonds and coupons for interest on overdue coupons or the installments of interest herein ordered to be paid.

DONE AND ORDERED at Jacksonville, Florida, this 26th day of April, 1949.

LOUIE W. STRUM,
Chief Judge.

Endorsed:

"Filed, April 26, 1949,
Jacksonville, Fla.,
Edwin R. Williams, Clerk."

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Request of St. Joe Paper Company for Printing of Additional Portions of Record.

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

In the MATTER

of

FLORIDA EAST COAST RAILWAY COMPANY,

Debtor.

No. 4827-J.

To the Clerk of the Above Styled Court:

On behalf of the St. Joe Paper Company, request is made that the following additional portions of the record on appeal be printed:

1. Beginning with the words "Mr. Bourne—Well, I think my first point, your Honor, will be, etc." third line from the bottom of Page 996 of the transcript of record of the hearing before the United States District Court on January 10, 1949, through the words "The Court—Well, that is out of the way", 9th line from the top of Page 1026.

2. Exhibit No. 205, covered by certificate of William P. Bartel, Secretary of the Interstate Commerce Commission as having been filed in evidence at the hearing before the Examiners at West Palm Beach, Florida, being included in Item No. 8 in the Designation of Contents for the Record by the Atlantic Coast Line Railroad Company.

3. Notice of the Interstate Commerce Commission dated June 21, 1946, and accompanying summary in the Third

Supplemental Report prepared by Ralph H. Jewell, Examiner, covered by certificate of William P. Bartel, Secretary, dated April 2, 1948, described in Item No. 12 of the Designation of Contents by the Atlantic Coast Line Railroad Company.

4. Petition of Atlantic Coast Line Railroad Company for leave to intervene filed July 29, 1947, being Doc. 633, included under Item No. 25 of the Designation of Contents of Atlantic Coast Line Railroad Company.

5. Objections of St. Joe Paper Company to intervention by Atlantic Coast Line Railroad Company, filed May 6, 1948, being Doc. 655.

6. Order of May 19, 1948, granting Petition of Intervention (among other things) of Atlantic Coast Line Railroad Company being Doc. 663, included in Item No. 25 of the Designation of Contents for the record by the Atlantic Coast Line Railroad Company.

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Attorney for St. Joe Paper Company

Portion of Argument on Hearing on Objections to the Plan.

Mr. Bourne: Well, I think my first point, your Honor, will be that the plan should be sustained as being fair and equitable.

The Court: You say that means only the Boyd case?

Mr. Bourne: No, sir.

The Court: I would not have thought so.

Mr. Bourne: I would not have thought so, myself, and I wouldn't think it makes any difference because I am in full accord with the proposition that the general adequacy of the price, or whatever you choose to call it, the fairness of

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the treatment, is subject to review to see whether there has been compliance with statutory standards——

The Court: Whether it is interpreted in the light of equity atmosphere?

Mr. Bourne: You can get it that way, or whether, if fair and equitable means the absolute priority and the rest is a matter of valuation, which produces the same result. In either case your review is for errors of law. Failure to follow statutory standards or the reaching of a conclusion without any material evidence to support that conclusion.

Now, a misunderstanding of the Boyd case appears quite clearly to have been the reason, if not the principal reason for the dissents. Your Honor has indicated that you are familiar with the history and origin of the Boyd case. It is merely, of course, an extension of the trust fund principle, and really, what the Boyd case held was you couldn't use a foreclosure decree as a method of making a distribution which would be inconsistent with the trust fund principle.

Now, there is no distribution in this plan that is inconsistent with the trust fund principle. Whatever is to be received, is to be distributed in conformity with the trust fund principle, according to the priorities. Apparently Commissioner Mahaffie construed the Boyd case to mean that nobody could buy a property with securities unless the mortgage debt was paid in full. That is what his opinion comes to. Now, what happened was that he took an excerpt from a brief which Mr. Walton had submitted, a single sentence from the Boyd case and also a sentence from the Denver opinion, and he construed those to mean what I have just said; that you have to pay the bonds in full if the property was to be turned over to anybody except the holders of the mortgage.

The Court: I did not see that.

Mr. Bourne: Well, it is there. I studied it very carefully.

The Court: I thought his idea was, if you wanted this thing done, what you have given them isn't worth what it says it is. That is the question of valuation.

Mr. Bourne: I will come to that. I understood his opinion, and certainly counsel on the other side——

The Court: He also said you are buttressing what you do with public interest? And that, again, is a thing I have not got much light on. He is criticizing what his brethren of the Commission said.

Mr. Bourne: That is right.

The Court: I will let them fight that out among themselves. Of course, the Commission's action can be determined by more than one. But, I want to know what my responsibilities and powers are and how I ought to exercise them and let the Commission alone.

Mr. Bourne: I think your responsibility, your Honor, is, first, to decide, is this a plan as authorized by sub-section (b)——

The Court: Authorized by the words——

Mr. Bourne: Authorized by the words of sub-section— of Clause 5 of sub-section (b).

The Court: Or whether those words should be interpreted in the light of subsequent litigation, which I do not like to do.

Mr. Bourne: That is the first question. Is it a plan authorized by Clause 5, sub-section (b).

Second, is it a fair and equitable plan in the sense— stating it in reverse, is there a violation of the Boyd rule.

In passing on the public interest——

The Court: It does not say anything about public interest, to me.

Mr. Bourne: No. I agree with counsel on the other side that you have the authority and a duty to review the public interest question——

The Court: Let us stop on that. I have got the impression that the majority of the Commission has decided that any internal reorganization here is not in accordance

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with public interest, for several reasons, and one of them is the whole management would be in one—I say one man; no, that would not be right.

Mr. Bourne: It would be in a charitable trust.

The Court: It would be in a charitable trust.

Mr. Bourne: Dominated by one man.

The Court: And it is not in the public interest to have that happen. I don't think that is so, personally. Have I got a right to review that?

Mr. Bourne: I don't think you have, for two reasons, your Honor. The Commission reached a plain conclusion as to public interest, which was based on a number of considerations. As to several of those, there seems to be no possibility of question. I take the decision of the Supreme Court to be certainly this: that even if you should disagree with the Commission as to one or more of the several reasons——

The Court: There would be enough left——

Mr. Bourne: —compelling the interest——

The Court: I do not know what the Commission thought. Did they intend to say in all cases it is contrary to public interest to have one man or one set of men own a majority of the stock in a railroad?

Mr. Bourne: No, they did not go that far.

The Court: Well, what do they mean, then, if this charitable trust is a bad thing?

Mr. Bourne: One thing that they said on that was that they thought they would not pass on my charge that there had been a breach of trust by Mr. Ball. But they said they did not think—they thought it was significant—they did not say what weight they would give to it, but the charitable trust was not set up to provide for the management of a railroad.

The Court: No, it is just the reverse. The road is going to be managed by the directors of the railroad.

Mr. Bourne: The Trustees of the charitable trust would pick the management that would run the railroad.

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The Court: Of course it would pick the directors. Sure.

Mr. Bourne: It would not be that the reason was, Mr. Ball would run it himself.

The Court: The argument, as I read in the record, was that they had a lot of banks and would differ with the management of the railroad. Would interfere with the management of the railroad. That is not the first time that banks had the controlling interest in railroads. They have done exactly what the Commission said they could do with others, I think. Is that a sound thing to say?

Mr. Bourne: It seems to me, that from the point of view of the public interest, to have the du Pont Trust set up with—as presently set up, with the uncertainties of the future—have the responsibility of control of the Florida East Coast is clearly dangerous to the public interest, independent of the banks and other business connections.

The Court: I do not see why you say "clearly". Maybe it is to you but it isn't to me. Why?

Mr. Bourne: Suppose you take the most innocent—suppose you say the Florida East Coast needs money.

The Court: What is better than to have a string of banks behind them? When they need money?

Mr. Bourne: You don't get cured by borrowing money from banks.

The Court: No. You only get temporary relief. If you get in deep, you are lost. This is a peculiar case in some respects. Here is a concern that is insolvent because it has an unfortunate bond issue, but otherwise it is a good railroad.

Mr. Bourne: You haven't been given, I think, quite a fair picture of the railroad.

The Court: They say it is on a very profitable basis and earning power of a million and a half a year, and for reorganization purposes it has a value of forty million five hundred thousand. It is a pretty good railroad, isn't it?

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Mr. Bourne: They expressed in their reports, and if you will read the transcript of the argument, you can see the continuing concern of those commissioners who voted for this plan, over the future of the Florida East Coast as an independent railroad.

The Court: I think all railroads have got a doubtful railroad, personally. I do not think we can say it is contrary to public interest, how it may run. It may run into trouble in the future.

Mr. Bourne: It is going to run but it doesn't have to run independently.

The Court: I am trying to get the picture that the Commission has. I do not understand why they say there is anything contrary to public interest in this part of it. No other reasons but just this one.

Mr. Bourne: The St. Joe Paper Company control, you mean?

The Court: Well, control in one enterprise. You might call it St. Joe Paper Company. They run the paper mill. I do not see that their business affects it. It is not on their line.

Mr. Bourne: The testimony is that they have seventy million dollars in the trust, that they spent one-third of it down here and were going to spend, from time to time, a great deal more. They are in about every kind of business. Your Honor speaks of connection with banks. That certainly has been true of the past, but that is the thing Congress is particularly worried about.

The Court: Have they ever said anything about banks? I have never read it.

Mr. Bourne: President Truman has.

The Court: He isn't the country and Congress. I just do not understand how the Commission can set out to say what they mean, that it does not think any reorganization is going to be contrary to public interest. This rich con-

cern or that rich concern is going to own a majority of the stock.

Mr. Bourne: I would hate to attack any plan where the Commission's decision as to co. trol—attack the decision of the Commission as to control. I think the Commission is given the full power to decide what is the public interest.

The Court: That is the way I started out, but you stated I must look at their statements and see if they are right.

Mr. Bourne: I think that if the Commission should come out with something that was absolutely ridiculous, or give a perfectly arbitrary, capricious reason, and no other——

The Court: Now, frankly, what happened there, as to the internal reorganization, is the fact that Ball bought up the majority of the stock. No one had any objection to the internal reorganization until that happened. When that happened, the Commission changed over.

Mr. Bourne: I cannot tell you why the Commission changed over.

The Court: No, but they did.

Mr. Bourne: I never got the feeling, when I argued with the Commission, that I was making much headway on that point, and I argued that point as best I could, as——

The Court: Some of the boys say Senator Pepper put that over and not you.

Mr. Bourne: (Laughter) This is the first hearing that I have been recognized as being in the case. But, my feeling was, and I think the transcript of the January, 1948 argument will bear me out, that the Commission was terrifically interested in—Commissioner Aitchison, asked questions in the transcript of 1946, which suggest how his mind was working and when I came back on the same line that he asked questions about in 1946, his observations in that development showed that his interest in that subject was very great.

The Court: I am just talking here now, maybe talking too much, but, you take the Coast Line. It is a good system

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according to common repute. It has got a rather extensive system, but, it could have owned half of the railroads in the United States and I would not think there wasn't any reason why they couldn't buy stock in another property, under present law.

Mr. Bourne: Oh, absolutely, it is prohibited.

The Court: It is prohibited?

Mr. Bourne: Without permission or approval of the Commission.

The Court: Well, that being the situation, they could not do it. The Commission is also worried because there might be some discrimination in operating the railroad. They come back to you and say you discriminated against St. Joe Paper Company. The answer to that is the Commission was notified of it and you were notified of it, and they stopped it. Isn't it true if everybody ran a railroad the same way and the Commission was notified, they would get on their necks and if they didn't stop it they would make them stop it?

Mr. Bourne: It really isn't a case of discrimination at all. This can be developed.

The Court: It looks like a build-up as far as the management is concerned.

Mr. Bourne: Yes.

The Court: I am not paying attention to it, myself, but I say the Commission has the power, and exercises it when anybody disobeys its orders in the operation of the railroads. I just do not understand. It looks to me like a novel idea. I also think you have not quite converted me from it, yet, that it isn't any of my business.

Mr. Bourne: Maybe I had better stop arguing. I think the commodities clause might enlighten you. The commodities was discussed by the Supreme Court in the Elgin, Joliet & Eastern case, and it is clear that the present Supreme Court is satisfied that the commodities clause was intended to prohibit the control by a single entity of a rail-

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road and a shipper which uses the railroad. That had to do with the Bethlehem Steel Company, which is largely a holding company.

The Court: I do not know anything about that case.

Mr. Bourne: And, the Carnegie Steel Company. By a vote of five-four, the Supreme Court said the commodities clause was involved like that, but, to use a holding company, you can link a shipper and railroad together. Then, in the Buffalo Creek case, decided last year, the identical situation existed and the Government attempted to upset the E. J. & E. case, and by a five-four vote, I think the Supreme Court refused to overrule the E. J. & E. case, and Justice Jackson said this is the law and I will stick to *stare decisis.* Four dissented on that, and it seemed to be general agreement that the Congressional policy is to aid, restrict and limit any form of linking of railroads with businesses and banks—I won't mention banks—but shippers of any kind. And, in the Western Pacific case, the Supreme Court referred to control as the most important factor of reorganization plans.

The Court: It looks like to me one of the most important rights to these people, I am to look into whether or not any creditor has received his rights, or, some such language as that. They began to talk about it in Subsection (f), and they held the bankruptcy power was subject to the Fifth Amendment. The mortgage creditor there had certain rights. More than a right to sell at foreclosure sale, and buy the property in and pay cash for it. They held it was unconstitutional then, and came back and said Congress said it won't, if it is as strong as we had it before. They simply delayed the thing and allow him to have his property back, not by sale, but time to work and let him redeem it. The Court held that was all right. Now, we have here another step. We won't have to sell it. The equity courts also won't sell it. But, you want to pay in something else than money. There is another step that is so staggering in my

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ind, and that is, to make people take what they do not ant.

Mr. Bourne: It is another step, but an established step, our Honor.

The Court: You say it is, but I am not persuaded that is.

Mr. Bourne: The Denver case decided the point precisely. The argument was based on the Radford case.

The Court: I will read the Denver case again.

Mr. Bourne: The trustee of the general mortgage in he Denver case relied on the Radford case and cited an rticle in the Columbia Law Review in 1935, expressing reat doubt of the constitutionality of the cram-down proision. I got out my copy of the Law Review, and saw a t of notes on the copy, indicating great doubt of its conitutionality myself. But that was what was decided.

Does your Honor want me to discuss the right to a foreosure sale?

The Court: Oh, no. That is the last resort now. If you an not have a reorganization now, it comes back in receivernip. The plan is not adopted. That might be the last ecourse. The plan could include that under the language f 77.

Mr. Bourne: I would like to review, very briefly, what he holdings were on the public interest, and then go into

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The Court: All right, if that interests you, and you hink I am involved, I guess I ought to know.

Mr. Bourne: I just want to be sure that it is clear that he Commission found there would be a more efficient transortation service. They found there would be substantial conomies and financial strength, greater financial strength. hose were all independent of the question of control. And ney are all abundantly supported.

The Court: Well, we come out at the same place.

Mr. Bourne: Now, on valuation, your Honor, I think the crucial finding is the one that was made in the report of April 8, 1947, and which is reaffirmed in the report of March 25, 1948. The Commission said, page 379, 267 I. C. C., and this is right in the language of the Milwaukee opinion:

"We find that the above securities and cash payment of the Coast Line, together with any other cash distributable to the First and Refunding bondholders of the debtor's estate, will constitute, in view of the greater stability of earnings in the future, which should be realized in the unified properties under the Coast Line control as compared with independent management, the equitable equivalent of the rights of these creditors in and to the property of the debtor."

The Court: Do you think that is the valuation which the Court should adopt?

Mr. Bourne: Yes, sir.

The Court: I am inclined to disagree with you. They can not tell the Court. That should be the Court's function. If they picked up the value of the Coast Line and itemized it out, and told me what that was. But, they did not take the debtor and tell what its value was. That is expert opinion.

Mr. Bourne: That is the final statement, your Honor.

The Court: Is there anything behind it but that?

Mr. Bourne: Oh, yes, indeed.

The Court: Tell me what it is.

Mr. Bourne: First of all, there is the discussion of the earnings of the Atlantic Coast Line, and the probable prospective earnings of the Florida East Coast Railway itself.

The Court: They found that for both railroads.

Mr. Bourne: They didn't undertake to make a finding of future normal income of the Atlantic Coast Line Railroad.

The Court: If they are going to compare values, don't they have to do that?

Mr. Bourne: Your Honor, that is a matter of—I think it is perfectly clear under the Supreme Court's decisions,

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at there isn't any decision—that there isn't any exact and recise method that the Commission has to follow in coming it with its opinion.

The Court: I am not worried about the Commission, but yself. Is there any exact method I must follow, either?

Mr. Bourne: No. I can understand your concern, your onor, because in the Western Pacific case, the Circuit ourt of Appeals of the Tenth Circuit——

The Court: You will talk about cases, and I want to ow about rights.

Mr. Bourne: Well, I was saying, it is just——

The Court: When you talk to me about being fair and uitable, it sort of gets me away from all law and things e that, that you might call hidebound.

Mr. Bourne: I don't think so, your Honor—I think our review is limited to the question as to whether there is aterial evidence to support it.

The Court: I do not think that is what it is at all. You y the Supreme Court says, of all of these matters rerred to the Court, that I am limited to say whether or t the Commission had any evidence to support their inion?

Mr. Bourne: In so far as there are factual matters, yes.

The Court: Well, the facts, yes.

Mr. Bourne: That the Court's review is limited to that tent, under the Supreme Court decisions.

The Court: Go ahead. I do not see why they put the urt into it at all, if that is the law.

Mr. Bourne: I think the functions of the Court are the me as they are on other matters that come before the terstate Commerce Commission. The alternative, your onor, would be to have both of them deciding what was ir in the sense of——

The Court: That is exactly what the Act says. You can by the words there. Now, you say that the Supreme urt has stayed away from there. The Supreme Court

says you can not get it through unless we both decide the same way. That is what the Act says.

Mr. Bourne: I would have thought exactly what you said. But the decisions of the Supreme Court are——

The Court: Which one? Let us get down to brass tacks.

Mr. Bourne: The Western Pacific.

The Court: That is one of the 318 United States cases?

Mr. Bourne: That is right. Here is what they said in the—Justice Reed said in that case:

"The power of the Court does not extend to participation in all responsibilities of the Commission. Valuation is a function limited to the Commission, without the necessity of approval by the Court. The first sentence of the last paragraph of Subsection (e) provides:

" 'If it shall be necessary to determine the value of any property for any purpose under this section, the Commission shall determine such value and certify the same to the Court in its report on the plan.'

"The function of valuation thus left to the Commission is the determination of the property valued whether stated in dollars, in securities or otherwise. One of the primary objects of the bill was the elimination of obstructive litigation on the issue of valuation and the form finally chosen approached as near to that position as seemed to the draftsman legally possible. Judicial re-examination was not considered desirable. None of the findings required of the Judge, under Subsection (e) relate specifically to valuation. Congress apparently intended to leave the determination of valuation of any property for any purposes under this section to the Commission. The language chosen leaves to the Commission, we think, the determination of value without the necessity of a re-examination by the Court, when that determination is reached with material evidence to support the conclusion, and in accordance with legal standards. It leaves open the question of whether, in reaching the result, the Commission had applied improper statutory standards. This latter point is discussed under the head-

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ng of method of valuation in this opinion, page 477 *infra*, where this plan is reviewed and upheld in this respect".

The Court: I think that language, as you say, does not confine it to valuing property of the debtor, but value of roperty given in exchange to the debtor, which you want to rovide in this matter. In other words, the valuation of the Coast Line securities.

Mr. Bourne: I think you value the property of the ebtor in terms of Coast Line securities.

The Court: That isn't my interpretation of the function f the Court in determining whether it is fair and equitable r not.

Mr. Bourne: Well, the Supreme Court has gone a lot urther as to the processes to be followed, your Honor. In ne Milwaukee case, it is stated that——

The Court: I agree I am no prophet, nor, the Interstate ommerce Commission, either. I would not attempt to ake an estimate of future earnings. I think that is up to ne Commission.

Mr. Bourne: This is not a long section, and I would like read it:

"And in discussing the method by which creditors should eceive full compensatory treatment for their rights, we nphasized, as already noted, that practical adjustments ather than a rigid formula are necessary. Certainly, those andards do not suggest any mathematical formula. We ecently stated in another connection that, whatever may e the pretenses of exactitude in determining a dollar aluation for a railroad property, to claim for its scientific alidity, is to employ the term in its loosest sense. Nashlle, C. & St. L. Railway *vs.* Browning, 310 U. S., 362, 370. hat is equally true here. A requirement that dollar values e placed on what each security holder surrenders and on hat he receives would create an illusion of certain where one exists and would place an impracticable burden on the hole reorganization process. See Bourne, Findings of alue and Railroad Reorganizations, 51 Yale Law Journal,

1057. It is sufficient that each security holder in the order of his priority receives from that which is available for the satisfaction of his claim, the equivalent of the rights surrendered. That requires a comparison of the new securities allotted to him with the old securities which he exchanged to determine whether the new are the equitable equivalent of the old. But, that determination can not be made by the use of any mathematical formula".

Now, we undertook, or, we introduced evidence following that process. What we undertook to do was to compare what these bondholders would get if there were an independent reorganization and what they would get under this plan, and that is the precise method that we followed in the evidence here. I do not believe that it is strictly germane, here, except to show, and we did show the margin of superiority of the Commission's plan over the alternative internal plan as suggested. I go along with the idea that if there are radical changes and conditions which the Commission has not foreseen, which had the result of making the Commission's plan unfair, the Court could send it back on that account, and we introduced evidence to show the reverse was the case. Namely, the margin by which the Commission's plan was better than the alternative plan, has greatly increased, based on actual earnings experience in the two years ending October 31, 1948. Mr. Stott made a comparative analysis. Mr. Aird, for the Bank of Manhattan Company, said that they had made—at least, I thought he had said it until Mr. Thomson seemed to indicate I misunderstood what he said, that they had made a comparative analysis. I asked Mr. Gordon, Mr. Lynch's auditor, if he had made any, and he said no. Now, that is the best equitable approach, your Honor. You can now, in the light of the Commission's decision of January 8, 1945, and in the light of Examiner Jewell's report, say what the alternative is. You have two years experience, and the Commission referred to the experience in its order up to

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the time of that order on March 25, 1948. The Commission gave very carefully detailed consideration to the subject.

The Court: They did, on the debtor, but I can not see where they did so well on the Coast Line.

Mr. Bourne: What they did on the Coast Line, your Honor, was to——

The Court: I am taking the bankers' outlook, which is represented by the Five Per Cent Committee, and, to a certain extent, Lynch, where they agree they do not want stock or want a railroad. They want to sell out and get out, and they look to market value and prospective market value, which is a guess, as to the future. I do not know what the Commission went on.

Mr. Bourne: They did it on comparative earning power. They made comparative tables, your Honor.

The Court: I have not seen them.

Mr. Bourne: They are in the report. And, on the re-argument, I handed up this——.

The Court: If they did all that, they beat me at that. I am frank in admitting that all along.

Mr. Bourne: Your Honor, this was in my summary of argument, and we had a stipulation entered on the record before the Commission, of all available figures, and this comparative analysis was a part of my summary of argument.

The Court: I am talking about the Commission. You say they made findings.

Mr. Bourne: They made reference to these in their report of March 25, 1948.

The Court: Do you mean these are figures that you furnished them?

Mr. Bourne: These are figures that I furnished them, yes, sir. Mr. Milam and Mr. Oliver handed them up——.

The Court: This is an estimate under proposed unification?

Mr. Bourne: Sir?

The Court: Is this proposed earnings, or what is it?

Mr. Bourne: That is what is called pro forma computation—a statement of what the earnings would have been——

The Court: That is the trouble. You said they made a finding of what their earnings were.

Mr. Bourne: It is based on the actual earnings, but a——.

The Court: With these adjustments?

Mr. Bourne: There are very few adjustments.

The Court: They get me lost on that. I will try to find out. To sum up your position on that, your position is, from a reading of the report, they were brought up to date in trying to value the securities to be issued by the Coast Line. On the prophetic basis like that, and you arrived at the conclusion you have already stated. However, I think we had better leave this valuation business alone.

Mr. Bourne: On pages 738 and 739, they said:

"In our second supplemental report we reviewed in some detail, the various estimates of prospective earnings available for fixed charges"—In answer to Mr. Milam's argument that they didn't bring things up to date on the debtor, and they referred to what you have just said, in this way:

"On arguments, counsel for Coast Line distributed a summary of argument containing, as an appendix, a comparison intended to test the relative treatment of the First and Refunding Mortgage bondholders under the approved merger plan and under a plan for an independent reorganization such as was approved in our second supplemental report and order. The test was based upon reported results of both Coast Line and the debtor for twelve months ended October 31, 1947 (with adjustments for certain extraordinary and non-recurring income and expense items. The result showed, without taking into consideration the cash payment of $4,125,000.00 to be paid by the Coast Line under the approved merger plan, more favorable treatment of present first and refunding bondholders under the approved merger plan in an annual return per distributive share.

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"That comparison was not challenged, except that counsel for the Lynch Interests protested that certain additional adjustments should have been made. Those additional adjustments would apply equally to the results under the approved merger plan and under a plan for independent reorganization with one exception, and the relative showing would be unchanged. The one exception is that counsel for the Lynch Interests contended that the result under the approved merger plan should be adjusted to include operating economies expected to result from the merger, which would have widened the differential of more favorable treatment under the approved merger plan".

The Court: But, what about the valuation?

Mr. Bourne: That is what, I think, Justice Douglas was talking about——.

The Court: What they said in effect is, a lawyer said so and so and the other lawyer did not say anything, therefore what we think the first lawyer said is so.

Mr. Bourne: No, your Honor, these are actual figures. These are figures. When you first think about this subject, anybody naturally feels you ought to put down exact items and amounts, exactly.

The Court: I certainly do. When you are making people take something they do not want to. Making them take it because you think they are entitled to it. I think a fair operating estimate should be made. When you put it up to the Court, you do not know if the Commission should be authorized to determine these things. The Constitution vests that power in the Courts.

Mr. Bourne: Including the Supreme Court.

The Court: Including the Supreme Court.

Mr. Bourne: There really isn't—. The point, your Honor, is you can not determine either one of them.

The Court: No.

Mr. Bourne: And, you have to——

The Court: I agree with you to this extent, that you have to have valuation when you are looking to the result.

You have to do it, but you did not. If they go at it on the same basis in both cases, and apply the same methods of valuation, being experts, then the results ought to be accepted. That is my mental attitude toward that. You said they did that. I was under the impression they did not.

Mr. Bourne: I think it says they did that.

The Court: If that is the fact, that the valuation is properly made, and I am bound to that, and then there is an equivalent, then what would I have to decide? Excuse me for interrupting you. I just thought we might get along further, if you——.

Mr. Bourne: I am glad to be interrupted, but, the thing is, I haven't any particular starting place. I would like to deal with this business, if your Honor is interested, in the use of the market quotations.

The Court: With what?

Mr. Bourne: Criticism was made that the Commission decided this on the basis of the fact that the St. Joe Paper Company and the Lynch Interests were going to make a big profit. Do you want any discussion on that?

The Court: Yes, if you insist that it is material, I do want to hear about it.

Mr. Bourne: I want to show what was handed to the Commission is based on the record and on financial publications to which reference was made under Supreme Court precedents. I only referred to them for a limited purpose on the re-argument. With respect to Mr. Ball's motivations, it seemed to me then, and it seems to me now that, if there is a summary rejection of a plan and it recognized at that time that a profit of not less than $14,800,000.00 would accrue to the duPont Estate and the St. Joe Paper Company, that is material on the subject of the reasonableness of his attitude. The same question you asked Mr. Claughton. And this, of course, was before the Commission. I do not agree that the Commission—it isn't a reasonable conclusion of the Commission report to say their conclusions were based on that. I certainly would not

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undertake the discussion on the basis of any proposition that people are limited, but I do think it was material for the purpose for which I submitted it.

The Court: What was that purpose?

Mr. Bourne: I was arguing before the Commission that they should ignore Mr. Ball's opposition to the plan, because it did not have any reasonable foundation. That here is a charitable foundation, and a trustee of this charitable foundation would not even permit a transaction which promised a profit of $14,600,000.00. I think that is wrong in a charitable trustee.

The Court: He ought to be out to make a profit.

Mr. Bourne: He ought to be out to make a profit for the charitable trust. He should not permit his desire for power to interfere——

The Court: Well, suppose that is wrong, what business of the Commission is that?

Mr. Bourne: It certainly affects the weight to be given, by the Commission, in connection with the consideration of the objections.

The Court: Now, they have ruled the plan out. That is not before me. They have not certified it. It is not before me. What has that to do with this plan?

Mr. Bourne: I am only saying the Commission's report and findings can not be successfully assaulted on the ground that they referred to those prices.

The Court: In saying they made a profit, they did not make a decision on it?

Mr. Bourne: No.

The Court: Well, that is out of the way.

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Exhibit 205 Before the Interstate Commerce Commission.

BEFORE THE INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET No. 13170

FLORIDA EAST COAST RAILWAY COMPANY REORGANIZATION

RESTATEMENT OF EXHIBIT 103 TO SHOW THE EFFECT OF ELIMINATING LOUISVILLE AND NASHVILLE DIVIDENDS FROM THE INCOME AVAILABLE FOR FIXED CHARGES OF ATLANTIC COAST LINE RAILROAD—1928-1945.

Year	Net Income Available for Fixed Charges	Louisville and Nashville Dividends	Adjusted Net Income Available	Fixed and Contingent Charges	Net Income or Deficit
1928	$ 15,259,605	$ 4,176,900	$ 11,082,705	$ 7,073,097	$ 4,009,608
1929	18,808,859	4,176,900	14,631,959	6,887,352	7,744,607
1930	13,133,032	4,176,900	8,956,132	6,878,441	2,077,691
1931	8,841,621	2,685,150	6,156,471	6,820,763	664,292R
Total 4 years	$ 56,043,117	$ 15,215,850	$ 40,827,267	$ 27,659,653	$13,167,614
Average per yr.	$ 14,010,779	$ 3,803,963	$ 10,206,816	$ 6,914,913	$ 3,291,903
1932	$ 73,994	—	$ 73,994	$ 6,759,223	$ 6,685,229R
1933	4,302,958	—	4,302,958	6,688,746	2,385,788R
1934	6,052,768	1,790,100	4,262,668	6,548,246	2,285,578R
1935	4,059,532	1,491,750	2,567,782	6,588,987	4,021,205R
1936	8,405,065	3,580,200	4,824,865	6,489,910	1,665,045R
1937	8,911,178	3,580,200	5,330,978	6,457,037	1,126,059R
1938	4,592,087	2,386,800	2,205,287	6,450,537	4,245,250R
1939	7,173,112	2,983,500	4,189,612	6,369,038	2,179,426R
Total 8 years	$ 43,570,694	$ 15,812,550	$ 27,758,144	$ 52,351,724	$24,593,580R
Total 12 years	$ 99,613,811	$ 31,028,400	$ 68,585,411	$ 80,011,377	$11,425,966R
Average per yr.	$ 8,301,151	$ 2,585,700	$ 5,715,451	$ 6,667,615	$ 952,164R
1940	8,032,483	3,580,200	4,452,283	6,208,946	1,756,663R
Total 13 years	$107,646,294	$ 34,608,600	$ 73,037,694	$ 86,220,323	$13,182,629R
Average per yr.	$ 8,280,484	$ 2,662,200	$ 5,618,284	$ 6,632,332	$ 1,014,048R
1941	$ 17,553,141	$ 4,176,900	$ 13,376,241	$ 6,420,669	$ 6,955,572
1942	29,185,901	4,176,900	25,009,001	6,566,546	18,442,455
1943	23,386,930	4,176,900	19,210,030	5,905,971	13,304,059
1944	21,608,678	4,176,900	17,431,778	5,507,285	11,924,493
1945	14,669,850	3,205,722	11,464,128	4,465,028	6,999,100
Total 5 years	$106,404,500	$ 19,913,322	$ 86,491,178	$ 28,865,499	$57,625,679
Total 18 years	$214,050,794	$ 54,521,922	$159,528,872	$115,085,822	$44,443,050
Average per yr.	$ 11,891,711	$ 3,028,996	$ 8,862,715	$ 6,393,657	$ 2,469,058

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Notice of Interstate Commerce Commission Dated June 21, 1946.

INTERSTATE COMMERCE COMMISSION

WASHINGTON, D. C.

FINANCE DOCKET No. 13170.

FLORIDA EAST COAST RAILWAY COMPANY
REORGANIZATION.

June 21, 1946.

NOTICE TO PARTIES OF RECORD.

Exceptions to the proposed third supplemental report in the above-entitled proceeding must be filed in Washington and served so as to reach other counsel or parties of record within 45 days from the date of this notice. Replies to exceptions may be filed and served not later than 10 days after the date upon which exceptions are due.

W. P. BARTEL,
Secretary.

Summary of Proposed Report Recommended by Examiner Ralph H. Jewell.

(Hereinbefore printed pursuant to request of W. G. Welbon, *et al.*)

Petition of Atlantic Coast Line Railroad Company for Leave to Intervene.

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

To the Honorable the Judge of the District Court of the United States for the Southern District of Florida:

The petition of Atlantic Coast Line Railroad Company for leave to intervene respectfully shows as follows:

1. Your petitioner is a corporation duly organized and existing under the laws of the State of Virginia.

2. At the commencement of these proceedings there was an open account owing by the Debtor to the Florida East Coast Car Ferry Company, a corporation of the State of Florida, and an open account owing by the Debtor to W. R. Kenan, Jr. and L. C. Haines, as Trustees under the will of Mary Flagler Bingham, the amounts of said open accounts being $1,500,000 and $400,000, respectively.

3. Proofs of said claims referred to in paragraph "2" hereof were duly filed in these proceedings.

4. On or about October 18, 1945 said claims referred to in paragraph "2" hereof were duly assigned to your peti-

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tioner. Your petitioner is, therefore, a creditor of the Debtor.

5. The Interstate Commerce Commission has issued a Report and Order, dated April 8, 1947, approving a plan of reorganization of the Debtor under which the properties of the Debtor would be transferred to your petitioner, as more particularly set forth in said Report and Order, and your petitioner is, therefore, an interested party in these proceedings.

6. Orders may be requested herein from time to time affecting your petitioner as a creditor or as an interested party, as hereinbefore set forth.

WHEREFORE, your petitioner prays that your petitioner be permitted to intervene generally in these proceedings.
Dated, July 25, 1947.

ATLANTIC COAST LINE RAILROAD COMPANY
By (Signed) F. D. LEMMON
Vice-President

(Signed) CHARLES COOK HOWELL
Atlantic National Bank Building
Jacksonville 2, Florida

(Signed) EDWARD W. BOURNE
(Signed) ANDREW OLIVER
120 Broadway
New York 5, New York
Attorneys for Atlantic Coast Line Railroad Company

Of Counsel:

HOWELL, MCCARTHY, LANE & HOWELL
Atlantic National Bank Building
Jacksonville 2, Florida

ALEXANDER & GREEN
120 Broadway
New York 5, N. Y.

Petition of Atlantic Coast Line Railroad Company for Leave to Intervene.

UNITED STATES OF AMERICA,
STATE OF NEW YORK,
SOUTHERN DISTRICT OF NEW YORK, } ss.:

F. D. LEMMON, being duly sworn, deposes and says:

That he is an officer, to-wit, a Vice-President, of Atlantic Coast Line Railroad Company, the petitioner above named; that he has read the foregoing petition and knows the contents thereof; and that he is credibly informed and believes that the same are true.

(Signed) F. D. LEMMON.

Subscribed and sworn to before me this 25th day of July, 1947.

(Signed) JAMES A. DUNNE, JR.,
Notary Public, State of New York
Residing in Kings County
Kings Co. Clk's No. 128, Reg. No. 318-D-8
N. Y. Co. Clk's No. 556, Reg. No. 480-D-8
Qns. Co. Clk's No. 721, Reg. No. 275-D-8
Nassau Co. Clk's No. 20-D-48
Certificate filed in Suffolk County
Commission Expires March 30, 1948

(SEAL)

Endorsed:
"Filed July 29, 1947, Jacksonville, Florida.
Edwin R. Williams, Clerk."

NOTE

Affidavit showing service by mail on July 29, 1947 upon parties to cause, of copy of Petition and Notice of Filing thereof, omitted in printing.

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Objections of St. Joe Paper Company to Intervention of Atlantic Coast Line.

IN THE

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

St. Joe Paper Company, owner of $25,000,000.00 par value First and Refunding Florida East Coast Railway Company bonds, hereinafter called "this Bondholder", files these its objections to the granting of the Petition of Atlantic Coast Line Railroad Company to intervene in this cause as a party, and says:

That in the years 1930 and 1931 all of the stock of Florida East Coast Railway Company, hereinafter called the Railway, and of the Florida East Coast Car Ferry Company, hereinafter called the Ferry Company, was owned by the Trust Estate of Mary Lily Flagler Bingham of which W. R. Kenan, Jr., and L. C. Haines were trustees. W. R. Kenan, Jr., was also at that time and has been ever since, President of said Railway and of said Ferry Company; L. C. Haines was either Vice President or Treasurer of both of said corporations.

The Ferry Company was an extension of the said Railway and was organized for the purpose of transporting

passengers, freight and railway cars from Key West, the land terminus of said Railway, to the Island of Cuba.

During the years 1930 and 1931 the Railway suffered severe losses from the collapse of the Florida real estate boom, hurricanes, bank failures and from the national depression, and its income from operations during those years was less than the amount necessary to pay its costs of operation and its fixed charges. A part of its fixed charges was interest on $45,000,000 First and Refunding bonds which was due on the first days of September and March of each year in the amount of $1,125,000. The Will of Mary Lily Flagler Bingham creating a trust of which the said Kenan and Haines were Trustees gave them power to sell any portion of the Trust Estate except stocks and bonds in said Railway and a Hotel Company and to use the proceeds thereof, as well as any income or increment therefrom in such manner and at such times as deemed desirable by the Trustees to maintain, administer and develop said Railway,

> "the primary purpose of the Trust being the keeping together of the enterprise into which my beloved husband, Henry M. Flagler, put so much of his energy, ambition and life".

On August 28th, 1930, three days before interest was due on the First and Refunding Bonds of the Railway, the Trustees of said Estate advanced to said Railway the sum of $300,000 and on September 1st, 1930, an additional sum of $100,000 for the purpose of maintaining and protecting their interest in the stock of said Railway.

Said Ferry Company, by its officers, W. R. Kenan, Jr. and L. C. Haines, also, advanced to the Railway the following sums on the following dates:

August 27, 1930....$300,000	(This advance was four
Sept. 21, 1930....$100,000	days before a coupon became due.)

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Nov.	26, 1930	$200,000	
July	7, 1930	$100,000	
Feb.	26, 1931	$600,000	(This advance was made three days before the March 1st coupon on the First and Refunding bonds became due.)
June	16, 1931	$300,000	
July	13, 1931	$100,000	

The Railway Company repaid the Ferry Company $100,000 on June 30, 1931 and $100,000 on July 16th, 1931, leaving a balance owing of $1,500,000. Said sum was advanced by said Ferry Company which was owned by the Bingham Estate for the purpose of protecting the stock interest of the Bingham Trust in the Railway Company.

These are the claims that Atlantic Coast Line Railway Company alleges were assigned to it. Proof of said claims was made with the Receivers and later with the Trustees in bankruptcy and recognized by them as "NONNEGOTIABLE CLAIMS DUE AFFILIATED COMPANIES—OPEN ACCOUNTS". On August 31st, 1931, the Railway was finally embarrassed; its cash resources were low, its borrowing power had been exhausted and it was unable to pay the coupons maturing September 1st, 1931. On August 31st, 1931, Standard Oil Company of Kentucky filed a creditors Bill in this Court alleging this condition, that interest would mature on the bonds September 1st and on equipment trusts, and that it was unable to pay same; prayed for appointment of Receivers to protect the interests of creditors, preserve the properties and distribute the proceeds of any sale among creditors according to their respective rights. On the same day, the Railway Company answered, admitted all allegations of the Bill and also prayed for the appointment of Receivers. On the same day the District Court appointed Receivers for said Railway, one of them being W. R. Kenan, Jr.

Objections of St. Joe Paper Company to Intervention of Atlantic Coast Line.

On May 10th, 1932, after a second default in payment of interest on its First and Refunding Mortgage, Bankers Trust Company and Bethune W. Jones, as Trustees under said Mortgage, instituted a suit in this Court to foreclose said mortgage and said case was consolidated with that of the Standard Oil Company of Kentucky.

In 1940 groups of holders of large amounts of both First Mortgage and First and Refunding Mortgage bonds of the Railway presented to the District Court a plan for reorganization of the Railway providing for the issuance of new securities, all of the new stock to be issued soley to holders of First and Refunding Bonds. On January 25, 1941, the Committee of holders of First & Refunding bonds of the Railway filed a petition for the reorganization of said Railway under the Bankruptcy Laws of the United States, attaching to its petition a copy of the plan of reorganization filed in the foreclosure proceeding. On the same day the Railway, by L. C. Haines, Vice President, answered admitting all allegations of the petition, including an allegation that a fair value of the properties of said Railway was less than the amount due, principal and interest, on its outstanding bonds, prayed for the approval of said petition and for the entry of an order relieving the Railway from its duty of filing a plan of reorganization. Such order was entered. The plan of reorganization filed made no provision for the payment of any money to the assignors of the claims above described or for their participation in the reorganized Railway.

Said proceedings were then referred by this Court to the Interstate Commerce Commission. At the hearings before that body in 1941 no one appeared on behalf of the Bingham Trust or the Ferry Company, nor was any claim made that either of them was entitled to be paid any sum of money or participate in a reorganization of the Railway. On April 8, 1942, the Interstate Commerce Commission approved a plan of reorganization substantially similar to

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that submitted to it holding that the claims of the Bingham Estate and Ferry Company were worthless and not entitled to participate in reorganization of the Railway.

Said proceedings were again heard by the Interstate Commerce Commission in 1944 and no representative of the Bingham Trust or of the Ferry Company appeared or made claim that either of them was entitled to be paid anything on said claims or that either of them was entitled to participate in a reorganization of the Railway. On January 8, 1945, the Interstate Commerce Commission again held that said claims were worthless and not entitled to participate in a reorganization of the Railway.

This Bondholder alleges that the claims of the Bingham Estate and Ferry Company, by reason of the facts above alleged were and are subordinate and junior in all respects to the rights of all other creditors, secured and unsecured, of the Railway and the original claimants could not have participated in a reorganization of said Railway without providing for payment in full of the claims of all other creditors, nor could said holders receive payment out of assets of the Railway until claims of all other creditors, secured and unsecured, were paid in full, because the assets of the Railway were of a value less than the amount due on its mortgages.

This Bondholder further alleges that the alleged assignments of said claims to Atlantic Coast Line Railroad Company transferred no right other than such rights as the assignors had and that Atlantic Coast Line Railroad Company accepted said assignments subject to the prior right of other creditors of the Railway to be paid in full and to the limitation that it could not participate in a reorganization of the Railway unless it paid or provided that the claims of all other creditors should be paid in full.

This Bondholder has no knowledge of what consideration, if any, was given by Atlantic Coast Line Railroad Company for said assignments. But says that if any con-

sideration was given therefor, it was for claims that had been admitted by the owners thereof to be worthless and which the owners had admitted were not entitled to participate in a reorganization of the Railway; and said Atlantic Coast Line Railroad Company is estopped to assert or claim any rights in this estate of the Bankrupt and from intervening in or becoming a party to this proceeding by its obtaining or accepting said assignments.

This Bondholder further alleges that said assignments were procured by Atlantic Coast Line Railroad Company pursuant to a purpose and motive previously existing to use them for purposes contrary to the provisions of law and against the interests of creditors of the Railway.

In November, 1944, prior to the report of the Interstate Commerce Commission on January 8, 1945, Atlantic Coast Line Railroad Company determined that it would be to its advantage and benefit to acquire control of the Railway. To accomplish this purpose it entered into an agreement with S. A. Lynch, et al., which was submitted by Lynch to the Interstate Commerce Commission as a plan for Reorganization of the Railway. That agreement proposed that all stock of the reorganized Railway be issued to holders of the First and Refunding bonds but that they would be compelled to sell 60% thereof to Atlantic Coast Line Railroad Company at $10.00 per share. Atlantic Coast Line Railroad Company says that this proposal was not its plan but was a plan of Lynch, et al. On January 8, 1945, the Interstate Commerce Commission disapproved that plan, holding that the Commission had no power or authority to compel creditors of the Railway to sell stock issued to them in reorganization to Atlantic Coast Line Railroad Company. Lynch, et al., and the Committee of First and Refunding Bondholders filed petitions for rehearing and reconsideration. The Interstate Commerce Commission permitted Atlantic Coast Line Railroad Company to file a brief in support of those petitions. While said petitions were

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still pending, Senator Claude Pepper, United States Senator from Florida, filed a "Memorandum in Support of a Rehearing in this Case, filed in his Capacity as a Citizen of Florida and on behalf of the Public" attacking the report of the Interstate Commerce Commission and urging it to reopen the case. The duties of Senator Pepper as a Senator did not include any right or duty to represent the public in that proceeding.

The Commission on July 20, 1945, entered an order reopening said proceeding and assigning it for further public hearing under the provisions of Section 77 of the Bankruptcy Act as amended, providing that

> "The hearing is to be held for the purpose of receiving further evidence with respect to modifications of the terms of the modified plan approved by the Commission's second supplemental report and order of January 8, 1945, and with respect to any plans which may be presented to the Commission at the hearing."

After entry of this order the Interstate Commerce Commission without notice to creditors of the Railway and without a hearing thereon, ordered that Atlantic Coast Line Railroad Company might intervene in the proceedings before it. In its Third Supplemental Report of April 8th, 1947, the Commission said that Atlantic Coast Line Railroad Company had been permitted to intervene and file a plan and was entitled to do so because the Commission had reopened the proceedings "principally to receive evidence with respect to new plans, particularly a plan providing for control of the debtor by Atlantic Coast Line Railroad Company" and that participation in the proceedings by Atlantic Coast Line Railroad Company "was desirable if not essential", although at the time of the entry of its order reopening said proceeding Atlantic Coast Line Railroad Company had no interest in the properties of the Railway, was

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not a creditor, and had not attempted to file a Plan of Reorganization.

The assignment of the claims of the Bingham Trust and Car Ferry Company to Atlantic Coast Line Railroad Company were executed October 18, 1945, five days before Atlantic Coast Line Railroad Company filed its so-called plan of reorganization with the Commission. This Bondholder has no knowledge as to when Atlantic Coast Line Railroad Company first negotiated for said assignments or when the owners of said claims agreed to assign same to Atlantic Coast Line Railroad Company nor what agreements were entered into at the time of, or prior to, the date of said assignments; nor of who represented the Atlantic Coast Line Railroad Company in the negotiations with the former owners for such assignments but this Bondholder says that under the facts and circumstances said assignments were prima facie not acquired in good faith and the conduct of Atlantic Coast Line Railroad Company in acquiring them was not fair and equitable; that Atlantic Coast Line Railroad Company obtained said assignments to give it a technical position as creditor of the Railway and as a step in a plan or scheme preconceived to acquire the properties of the Railway, utilizing, also, the position it had apparently acquired as intervenor in the proceedings before the Commission, to attack the right of creditors of the Railway, to a reorganization of it, and to that end to submit a so-called Plan of Reorganization which was in truth and fact not a Plan of Reorganization but a part of its design to compel a sale or forced transfer of the properties of the Railway to it at a price and on terms acceptable to it.

This Bondholder alleges that Atlantic Coast Line Railroad Company at no time disclosed its purposes and plans to it or to other holders of a majority of First and Refunding bonds except as this Bondholder is informed and believes, to Safe Deposit and Trust Company of Baltimore, then a holder of a substantial amount of First and Refund-

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ing Bonds of the Railway and, also, owner as Trustee of more than fifty percent of the stock of Atlantic Coast Line Company of Connecticut and of stock in Atlantic Coast Line Railroad Company, and to the Committee of First and Refunding Bonds, a party to this cause. Both of these parties approved or consented to the Plan of Atlantic Coast Line Railroad Company. Atlantic Coast Line Railroad Company has not, as required by the law of bankruptcy, made a full, open and complete disclosure of the facts and circumstances under which it obtained said assignments or of its negotiations or consultations with the Committee of First and Refunding Bondholders, Safe Deposit and Trust Company and Senator Pepper with reference thereto, or whether anyone or more of those named knew of the purpose of Atlantic Coast Line Railroad Company to acquire properties of the Railway or the substance of its proposed Plan of Reorganization, prior to the date of filing the same with the Commission. Nor has this Bondholder knowledge of whether W. R. Kenan, Jr. and L. C. Haines, Trustees of the Bingham Estate and of the Car Ferry Company, as well as of the Debtor Railway, knew at the time they executed said assignments, the purpose of Atlantic Coast Line Railroad Company, the terms of its proposed "Plan of Reorganization" or the use Atlantic Coast Line Railroad Company intended to make of said assignments. None of these facts were disclosed to the Commission and are not set forth in its Petition for leave to intervene. This Bondholder says that the assignment of these claims to a stranger to the proceedings in Bankruptcy under the circumstances alleged with the cooperation and approval of some holders of First and Refunding bonds and without the knowledge of this Court or of this and other bondholders, and the use attempted to be made of such assignments violates the law of Bankruptcy and debars Atlantic Coast Line Railroad Company from being granted any rights or privileges in this proceeding.

Objections of St. Joe Paper Company to Intervention of Atlantic Coast Line.

This Bondholder alleges that the so-called Plan of Reorganization filed by Atlantic Coast Line Railroad Company is the basis of the report of the Commission and unless it had been presented and considered by the Commission, the latter's Plan certified to this Court, would not have been designed or certified. That the so-called Plan certified by the Commission is not intended to rehabilitate the Railway nor to benefit its creditors except as such benefit be incidental, but on the contrary, was designed by Atlantic Coast Line Railroad Company to enable it to acquire properties of the Railway (including the cash earned by the Trustees from operations). Atlantic Coast Line Railroad Company has in notices sent to its own stockholders of a meeting to be held May 14th, 1948, called for the purpose of acting upon recommendation of the Board of Directors of Atlantic Coast Line Railroad Company that the plan of the Commission be accepted, represented that its purpose in filing its so-called plan was to enable it to retain control of freight and passenger interchange with the Railway at Jacksonville, Florida, particularly north bound movements of fruits and vegetables, and movement of tourists in both directions; that those are important items of revenue to Atlantic Coast Line Railroad Company and that it will be advantageous to Atlantic Coast Line Railroad Company for the Railway properties to be unified with its own. But said recommendation is based on the price and the terms fixed and contained in the Commission's report which do not vary materially from the offer of Atlantic Coast Line Railroad Company. Atlantic Coast Line Railroad Company has repeatedly stated to the Commission that any change made in the plan submitted by it, must first be accepted by its stockholders before the plan could become effective. This creditor alleges that the plan certified to this Court is not feasible or practical, and depends entirely upon whether Atlantic Coast Line Railroad Company stockholders will accept it as advantageous to them and that the control exer-

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cised over the act of the Commission being vested in a private party, and not in the Commission and Court as contemplated by law renders said Plan null and void as a matter of law.

This creditor alleges that the proceedings before the Interstate Commerce Commission were without precedent, and violated the requirements of due process of law; they were apparently a prosecution of Railway creditors by Atlantic Coast Line Railroad Company to obtain a decision of the Commission condemning or expropriating rights of creditors of the Railway and properties of the Railway, free from lien for Atlantic Coast Line Railroad Company at a price and on terms, acceptable to it. Yet, no pleadings were filed by Atlantic Coast Line Railroad Company against creditors of the Railway, no public authority lawfully authorized so to do had determined that the property of the Railway and the interest of its creditors in the same should be divested and no evidence was offered proving a necessity for divesting the same.

The report of the Commission contains no finding that justified a condemnation or expropriation of the properties of the Railway and the interests of its creditors, and if given effect would confiscate vested rights in the property of the Railway for the advantage or benefit of a stranger to this proceeding contrary to the provisions of the Constitution of the United States and that of the State of Florida.

This Bondholder and other holders are entitled to complete and full disclosure by Atlantic Coast Line Railroad Company of all facts and circumstances under which such assignments were acquired and of its plans and purposes in acquiring the same, in order that this Court may determine whether Atlantic Coast Line Railroad Company acted in good faith or for the purpose of utilizing them and the reorganization proceedings for its own selfish advantage. This Bondholder has, therefore, served upon Atlantic Coast Line Railroad Company, interrogatories seeking discovery

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of facts within its knowledge and will present other evidence in order that this Court may, in ruling upon the petition of Atlantic Coast Line Railroad Company, decide the same in the light of all the true facts.

(Signed) GILES J. PATTERSON,
Attorney for St. Joe Paper Company, Party to this Cause.

Endorsed:

"Filed May 6, 1948, Jacksonville, Fla.
EDWIN R. WILLIAMS, Clerk."

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Order Granting Intervention of Atlantic Coast Line and Others.

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE SOUTHERN DISTRICT OF FLORIDA.

In Proceedings for the Reorganization of a Railroad.

IN THE MATTER *of* FLORIDA EAST COAST RAILWAY COMPANY, Debtor.	No. 4827-J.

All affected parties having been heard, after due notice, upon the matters hereinafter mentioned, it is upon consideration thereof—

ORDERED AND ADJUDGED:

(1) The Objections of St. Joe Paper Company (filed May 6th and May 14th, 1948) to the granting of the Petition of Atlantic Coast Line Railroad Company (filed July 29, 1947) for leave to intervene herein, are overruled and the Atlantic Coast Line Railroad Company is hereby permitted to intervene generally in this proceeding and become a general party hereto;

(2) Petitions of First and Refunding Mortgage Trustees (filed Sept. 24, 1947) to amend Orders dated July 17, 1947 and July 25, 1947, are severally denied, without prejudice;

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Order Granting Intervention of Atlantic Coast Line and Others.

(3) Petitions of (a) The New York Trust Company as Trustee, filed May 4, 1948; (b) Seaboard Air Line Railroad Company, filed May 10, 1948; and (c) Southern Railway Company; Georgia Southern and Florida Railway Company; The Cincinnati, New Orleans and Texas Pacific Railway Company; New Orleans and Northeastern Railroad Company; The Alabama Great Southern Railroad Company; and St. Johns River Terminal Company, filed May 12, 1948, for leave to intervene herein, are severally granted and said named parties are hereby permitted to intervene generally in this proceeding and become general parties hereto.

DONE AND ORDERED at Jacksonville, Florida, this 18th day of May, 1948.

(Signed) LOUIE W. STRUM,
U. S. District Judge.

Endorsed:

"Filed May 18, 1948, Jacksonville, Fla.
EDWIN R. WILLIAMS, Clerk."

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CLERK'S CERTIFICATE.
UNITED STATES OF AMERICA.
UNITED STATES COURT OF APPEALS,
FIFTH CIRCUIT.

I, Oakley F. Dodd, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the printed record, Volumes I, II and III, pages numbered from 1 to 936, next preceding this certificate is a true and complete copy of the printed record on file in this office in a certain cause in said Court, numbered 12821, wherein ATLANTIC COAST LINE RAILROAD COMPANY, ET AL., are Appellants, and ST. JOE PAPER COMPANY, ET AL., are Appellees, as full and complete as the originals of the same now remain in my office.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals at my office in the City of New Orleans, Louisiana, in the Fifth Circuit this twelth day of March, A. D., 1953.

CLERK
United States Court of Appeals
for the Fifth Circuit.